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COAL SLURRY PIPELINES

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BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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ON

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COAL SLURRY PIPELINES

THURSDAY, MAY 5, 1983

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:38 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to these hearings: Cindy Douglass, staff counsel, and Marty Kress, minority professional staff member.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Today we begin 2 days of hearings on coal slurry pipelines. Last year, prompted by the Energy Committee's approval of S. 1844, the subcommittee conducted hearings on a wide range of issues raised by such pipelines. This year the Energy Committee again has reported a bill, S. 267. In these hearings we intend to focus on particular issues of importance to this committee. The specific questions to be addressed include the following:

Should coal slurry pipelines be common carriers? How should they be regulated by the Interstate Commerce Commission? How will they affect rail rates for coal and other commodities? How can consumers be protected from the effects of vertical integration by utilities, construction cost overruns, and long-term take or pay contracts?

I believe that the benefits of coal slurry pipelines have been greatly exaggerated and the drawbacks overlooked. Legislation before the Congress proposes to confer special Federal powers on a small number of private parties. And what will be the result?

I fear that the result will be overcharged consumers, crippled railroads, and farmers facing higher freight rates and diminished service. In this regard, I might note that farm groups representing the entire spectrum of American agriculture are here today to voice their opposition to coal slurry pipelines.

Proponents of these pipelines claim that this legislation will not cost the Government a nickel, but I would assert that a strong rail system is vital to our national interest. If we damage it now with unfair competition, we will pay the price later.

It is our responsibility as members of this subcommittee to look carefully at the ramifications of coal slurry pipelines, particularly those issues that fall within the jurisdiction of this committee, before any further action is taken on legislation that would encourage their construction.

First we have a panel of William Dempsey, the president of the Association of American Railroads, and James B. Crawford, vice chairman of the Slurry Transport Association board of directors. Gentlemen.

Mr. Dempsey.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. DEMPSEY. Mr. Chairman, thank you very much. It is a pleasure to be here testifying for I guess the 50th time or so on this issue that has been before the Congress for some 20 years. We hope in the rail industry that it will get the same disposition that it has repeatedly in the past.

It is of course common knowledge that the railroads have consistently opposed the grant for coal slurry pipelines. I have a statement that I would ask be made a part of the record and I will not, I hope, impinge unduly on your time with what is in that statement this morning, and I would rather respond to your questions.

But let me just take a couple of minutes to outline the basics of the railroads' position. We come to it, of course, from a perspective of self-interest, and it is the Congress responsibility to see whether our self-interest in this case corresponds with the public interest. We think it does.

But just in terms of the order of magnitude of the problem that this confronts us with, the subcommittee need not rely upon me or my associates. You can go to, I think, the most disinterested study that has been made of this issue by OTA. Their conclusion was that if the five slurry pipelines then on the boards were built by the year 2000 or 1990, I have forgotten which, the rail industry would in terms of its revenue, lose some $700 miliion a year.

Now, in terms of constant dollars, that is more in terms of net revenue than the industry has made in any of the last 10 years. It is a wipeout scenario.

Right now we have some 13 pipelines on the drawing boards, not 5. So if I may be permitted to extrapolate, it appears to us that based on OTA's figures we are looking at a net loss of something in the way of let us say a billion and a half dollars a year, and that is a drain that this industry simply would not be able to stand.

The results would be twofold. We would of course attempt to recoup by raising rates wherever we could. I remember then Administrator Bob Blanchette was testifying last year and he was asked by Senator Pressler what would happen to coal rates in North Dakota—not coal, but grain rates in North Dakota, if the pipeline then on the books was actually built into the Powder River Basin.

And his response——

Senator DANFORTH. I would guess it was South Dakota.

Mr. DEMPSEY. I am sorry, South Dakota, of course.

And his response was that they would go higher than a cat's back. He was asked to specify and the FRA then did a study and they produced data that demonstrated to their satisfaction that grain rates in South Dakota would go up approximately 40 percent.

But there is no way—we live in a competitive market, by and large, and there is no way that we could recoup anywhere near the amount of revenue that would be lost, and so the result would be a deterioration of service, and I fear that what Congress would be looking at would be a replay of Penn Central. And it would be, it seems to me, anomalous if, having spent billions of dollars to restructure the northeastern rail system, that Congress would pass a bill that would revisit that kind of plague on all sections of the country.

The result in short would be that for all of those shippers and all of those communities that would remain dependent upon rail service, there would be an escalation of costs and a deterioration of service. I am sure you will be receiving testimony from labor on the matter, but I would note that we would lose roughly 40,000 jobs on a permanent basis. The country would lose something in the way of 70,000 jobs. So it cannot be considered that this is a jobs bill. It is an antijobs bill.

Well, that is all the bad news. What can the good news be, then? What arguments can be advanced in support of this legislation? It used to be that the proponents claimed that we needed coal slurry pipelines because the railroads simply did not have the capacity to carry the coal that is to be transported over the next decades.

That argument is not advanced any more, quite reasonably because every study that has been made indicates that our problem, as we in the industry have always known, is not one of scarcity of capacity, but rather one of excess capacity.

But it is now said that what we need is competition in the way of rates, and there is a suggestion, sometimes explicit, sometimes implicit, that something untoward has gone on in the way of rail coal rates. So let me address that for a moment.

The data are readily available from the Bureau of Labor Statistics and the Department of Transportation and the ICC. I do not know that they are used very often, if ever, by proponents of the pipelines, but what they show in general is this: No. 1, the rail rates for transportation of coal have gone up over the last 10 years less rapidly than the price of coal itself.

No. 2, rail rates for transportation of coal, if one uses an appropriate deflator, have actually declined in real terms over the last 10 years.

No. 3, they have gone up only marginally more than rates for all of our other commodities.

No. 4, they have gone up only marginally more than the cost increases that we have experienced as calculated and approved by the ICC.

And No. 5, they are actually lower in terms of gross ton-miles than our average rates in terms of gross ton-miles for all other commodities.

So I suggest that the case cannot be based on any claim that something radically wrong has happened in the way of rates for coal transportation.

Finally, I would simply observe that what we are talking about here in the way of competition could not be fair competition, because coal slurry pipelines cannot be as a practical matter common carriers. We would be obliged to continue to be common carriers.

They would take the most profitable traffic away from us, and they would do it—let me simply note by way of concluding—they would do it in a way that we consider to be highly anticompetitive. That is to say, by way of take or pay contracts over long periods of time, 20 or 30 years, which would oblige the utility to pay for a specified amount of coal whether they took it or not.

We have seen the pernicious effects of that kind of contract in the natural gas area throughout the country and in this region in particular. It is our view that contracts of this nature are contrary to public policy and should not be encouraged by the Congress of the United States.

Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey. I am President of the Association of American Railroads, a trade association representing the nation's freight railroads. Our members operate approximately 94 percent of the nation's railroad mileage, haul approximately 98 percent of the nation's railroad traffic and employ 92 percent of the nation's railroad workers.

I appreciate this opportunity to share with you the railroad industry's views on S. 267, the proposed Coal Distribution and Utilization Act of 1983.

The measure before this Subcommittee does not deal with an issue new to Capitol Hill. This issue has been the subject of thousands of hours of hearings and debate, numerous government and private studies, countless speeches, and intensive lobbying.

The proposal itself has changed very little in the past 8 years. It still has as its main goal the grant of federal eminent domain powers to the builders of coal slurry pipelines. And—despite all the controversy that has surrounded this measure—despite years of failure to achieve passage—proponents continue to describe it as "simple."

But, if the proposal itself has changed little over eight years, crucially important factors have changed greatly. Eight years ago, the nation was faced with oil shortages and rapidly rising oil prices—both seeming to point to tremendous expansion in the use of domestic coal. Inflation was high and getting higher. And—coming out of the recession of the mid-1970s—unemployment was not seen as a major problem. Interest rates for long-term financing—although they were not seen so at the time—were comparatively low. Pipeline promoters cited these conditions as justification for their claim on the federal power of eminent domain.

But none of these conditions exist today. Oil supplies are abundant and oil prices are continuing to drop. Coal forecasts are being revised downward. Though interest rates remain relatively high, inflation appears under control. Unemployment is now our most serious national concern.

Pipeline promoters know, as do all of us here, that the central issue in this controversy is the public interest. Will the public interest be served by government action to foster coal slurry pipelines?

Or will it be better served by leaving the power to grant eminent domain in the hands of the states—by leaving decisions to be made by those closest to each situation?

Pipeline promoters are attempting to show that their operations would so benefit the national public interest as to make it necessary to override the wishes of individual states.

One might expect that the dramatic changes I have described, taking place in such a short time—a little more than one-fourth of the economic life of a coal slurry pipeline—would have sobered slurry advocates and muted their claims. But that is not the case. They press their demands for special, virtually unique treatment by the Congress as vigorously as ever. They have developed new rationalizations to accommodate the new economic and energy situations—and, when they couldn't do that, they have ignored the changes and invited us all to pretend we are still living in 1975.

Let us examine the pipeline advocates' claim on the public interest—and try to see where the true public interest lies.

LABOR

I would like to take up the matter of labor first because it is here that we have seen not only a turnabout in the unemployment situation but, in consequence, an almost Orwellian shift in the argument of slurry proponents.

Until unemployment became such an agonizing problem, pipeline proponents made much of the fact that it takes few employees—compared to railroads—to move coal by pipeline. Railroads, it was pointed out, were labor intensive, while pipelines were not. The point was that, with double-digit inflation, the railroads would be more affected by rising labor costs than slurry pipelines.

And with employment at reasonably high levels, slurry advocates set aside as inconsequential the findings by the Office of Technology Assessment (OTA) that coal pipelines would result in a sizeable net loss of permanent jobs. (OTA concluded that for every one permanent pipeline job created, six permanent railroad operating jobs would be lost.)

Today, however, unemployment is a serious national problem. A measure that would further reduce employment is not attractive. So, the pipeline promoters, finding themselves with a sow's ear, have attempted to fashion it into a truly remarkable silk purse.

Only a few months ago, pipeline advocates virtually papered Capitol Hill with the ludicrous claim that pipeline legislation is jobs legislation. Curiously, when slurry advocates testified before the Interior and Insular Affairs Committee of the House of Representatives a few weeks ago, their claims were moderated.

I think this was wise, because the fact is that the very methodology cited by slurry advocates—when applied properly—demonstrates that the real effect of operating coal slurry pipelines would be a net loss of 71,000 jobs annually.

Obviously, I have no way of knowing whether proponents have truly seen the error of their ways. Perhaps they will resurrect their claim today or at some future time deemed propitious. Therefore, I propose to address it in some detail.

The Bureau of Labor Statistics (BLS) "methodology" which pipeline proponents use is simply a model designed to estimate the effects of revenue increases—or decreases—in various segments of the national economy. Sure enough, if you insert $12 billion—the proponents' estimated construction costs for currently-planned pipelines—into the heavy construction segment of the BLS model, you will find it producing 500,000 jobs in various lines of work.

Nevertheless, the result is invalid. First, according to the model, $12 billion would have to be spent in this one segment of the economy in a single year to produce a total of 500,000 jobs; and it is inconceivable that all the money needed to construct all the planned coal slurry pipelines would be spent in a single year. A far more likely scenario is that, even if this legislation passes today, relatively little would be spent for several years.

In other words, we are not in any way talking about a quick "shot in the arm" for 1983's unemployment problem—nor for that of 1984, nor, in all likelihood, for that of 1985. Before construction could begin, contracts would have to be negotiated, routes surveyed, financing acquired, regulatory approvals obtained, environmental statements filed and land acquired. Even with eminent domain powers, this would be a protracted process.

Now, what would happen when construction finally began? Even on the altogether improbable assumption that every planned pipeline were to commence construction about the same time, it would take about five years to complete construction. Thus, we are talking about an average expenditure of $2.4 billion a year. this, according to the BLS model, would produce 100,000 jobs. But it would not produce 100,000 jobs the first year, added to 100,000 the second year and so on. The jobs disappear when the money does, meaning the fifth year total would not be 500,000 but 100,000—the same as the first year.

Even more importantly, the pipeline proponents fail to consider the effect on umemployment by virtue of a shift in coal transportation from rail to pipeline. We are talking here not only of a shift from railroads in the actual transportation of coal, but also a shift in construction from coal cars, locomotives and track improvements.

Currently proposed coal slurry pipelines, according to slurry advocates, will carry some 250 million tons of coal annually. Those 250 million tons represent virtually all of the growth in coal production over the next 10 years, according to recent projections such as those by the National Coal Association (NCA), Data Resources, Inc., and National Economic Research Associates (NERA)—projections which reflect the realities of domestic and world economic conditions.

These recent projections are significantly lower than those thought likely during the height of petroleum shortages and OPEC solidarity. Since some increase in mine-mouth consumption of coal also can be expected, the movement of 250 million tons of coal by pipeline will almost certainly lead to contraction of rail coal traffic rather than the projected growth spoken of by slurry promoters.

What this means is that there will be no demand by the railroads for additional coal cars, locomotives and track improvements to handle this growth.

The value of this growth—in terms of new coal hoppers, new locomotives and track improvements—is $6.89 billion.[1]

According to the same BLS methodology, this investment would create 197,000 jobs. As with coal slurry pipelines, we can expect this investment to be spread over about 5 years, meaning more than 39,000 jobs annually as a result of railroad capacity expansion. Thus, it is incorrect to say that coal slurry pipeline construction will create 500,000 jobs—or 100,000 jobs annually for five years. The loss of 197,000 jobs from lost railroad capacity investment—39,000 jobs annually—must be substracted out. And that is only the beginning.

Of far more lasting importance is the impact of the two coal transport alternatives on the permanent jobs needed to operate the systems.

Unit train transportation of the same amount of coal would produce rail revenues of $3.5 billion annually.[2] The BLS methodology produces an annual estimate of 93,000 jobs associated with this railroad revenue figure—reflecting the relative labor intensity of rail operations.

Assuming that the revenues generated by coal slurry transportation are equivalent to the revenues that would be generated by rail transportation, the BLS methodology produces an estimate of 22,000 jobs annually over the lives of the pipelines. If, indeed, coal slurry transportation could be performed less expensively—and we seriously doubt it—then the jobs created would be even fewer.

Correctly applied, the methodology seized by the coal slurry supporters indicates that the switch of 250 million tons of coal movements from railroads to pipelines might produce 61,000 more jobs annually over a five-year construction period but would then cause losses of 71,000 jobs each year for the next 30 years!

The railroad industry alone would lose about 41,000 jobs—that's the equivalent of 11 percent of our total labor force. This threat comes at a time when rail employment has suffered its most precipitous decline in history—from 510,000 to 388,000 in less than two years—at a time when the U.S. Railroad Retirement Board says under existing conditions employment could fall to 300,000 by 1988—at a time when the Railroad Retirement System with its one million beneficiaries is already confronting a 40 percent reduction in federal benefits because of the past drop in employment—at a time when railroad equipment manufacturers have had their worst economic year in modern history and now have four out of every five workers unemployed.

Moreover, it should not go unnoticed that many additional lost jobs will be associated with small coal mines. Giant coal pipelines can economically serve only the largest mines in a few areas. Smaller, more labor intensive mines would simply be less competitive at the mine mouth because their rail costs would get higher as the railroads have to recover costs that would have been absorbed by the coal now moving in pipelines. And these dislocations would be severe and painful in small mining communities.

Slurry pipelines never were and never will be labor intensive—and slurry pipeline legislation never was and never will be job creation legislation. Quite the opposite. It would be job deprivation legislation.

Thus, if we are keeping a tote board on public interest issues with regard to slurry pipelines, we must—in the column headed "jobs"—write "No."

COAL PRODUCTION

Of course, slurry proponents also allege that, because of anticipated increases in coal production, transportation of coal would not decline—there will be "plenty to go around"—and thus there won't be any reduction in rail employment—or any real damage to existing modes of transportation.

Even if the slurry proponents' assumptions about coal production were reasonable, the figures cited above respecting rail unemployment and projected trends

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[1] Based upon the number of additional cars, locomotives and track improvements needed to handle 250 million additional tons of coal. Coal hopper cars cost $40,000 each; 3,500-horsepower locomotives cost $1 million each; and the track improvements associated with this increased tonnage are $1 billion.

[2] Based upon 10,000 tons of coal per unit train, a 700-mile average coal unit train haul and average coal unit train revenue of 2 cents per ton-mile.

demonstrate that an increase in rail jobs associated with coal transportation is essential if the industry is merely to maintain stable employment.

But the slurry promoters' assumptions are not reasonable. The rely upon outdated projections of rapid coal growth—projections such as one by the Department of Transportation's (DOT) Coal Transportation Task Force in 1978 predicting an almost doubling of coal production between 1975 and 1985; and one prepared by the Department of Energy (DOE) for Congress in 1979 which projected 1.13 billion tons of coal production by 1985, 1.35 billion tons by 1990 and 1.7 billion tons by 1995.

But these projections have given way to more sober assessments based upon the realities of the day. While there is a consensus that coal will continue to grow as a major source of energy, both domestically and world wide, the expectations of exceptional growth in coal that were held in the 1970's have largely faded. There are a number of reasons for this.

First, and most important, is the drop in per capita electric consumption in the United States. The fact that people are using less energy has caused a chain of effects that have drastically altered expectations of coal use.

After four decades of 7-percent annual increases in electric power consumption, energy experts were thrust into unfamiliar territory by the oil embargo of 1973. The initial reactions were to assume that energy consumption patterns would continue virtually unchanged while the sources of energy would adjust to the change in the price of petroleum. In this light, forecasts made in the mid-70's tended to show very sizable increases in coal consumption.

However, altered circumstances have produced diminished expectations. The National Coal Association says there was a slight decline in 1981 production and another in 1982, with a forecast growth of only 2 percent for 1983. And in reporting that projection, NCA President Carl Bagge said, "The coal industry was slow feeling the effects of the recession and it will be slow coming out of it." This 2-percent growth rate is also projected by DOE. Based on production so far in 1983, both estimates for this year appear too high for total U.S. coal production.

And these more gloomy projections came before recent unraveling of the OPEC cartel—an event which will not only lower oil prices for some time to come, but will greatly impede additional shifts by electric utilities from oil to coal.

National Economic Research Associates has projected an annual growth rate of less than 3 percent. If the annual growth rate continues in this range, it will take nearly 10 years before coal production increases by 250 million tons.

Some of this added production undoubtedly will be consumed via mine-mouth generation which currently handles 15 percent of coal production, up from 6 percent in 1970. Another portion of the 250 million tons, that which moves only short distances, will move by truck transportation. (Trucks now move something less than 10 percent of all coal production.) Still other segments will be carried by barges—the second largest mode of coal transportation—since few of the pipeline routes parallel the waterways.

Thus, the planned pipelines' required diet clearly exceeds the total new coal traffic which will be available to the railroads in the next decade. If the railroads are faced with no growth, much less losses, in the products, which represents 40 percent of its tonnage, how can the industry ever hope to achieve an adequate financial status? With losses in its major commodity, significant elements of the rail industry will be facing the same shrinking traffic base that brought on the collapse of the Northeastern railroads.

Not all railroads will be affected. But those that find a pipeline built in their territory will be faced with huge adversities since the average pipeline proposed handles half as much total tonnage as all goods moving on a medium-sized railroad and more coal tonnage than moves on most large railroads.

There is clearly nothing in the coal outlook to justify the notion that a brand new mode of these dimensions can be superimposed on the coal-hauling business without serious harm to existing transporters which will lose most of their growth opportunities and some of their existing traffic also.

And, clearly, there is no justification for the notion that the addition of capacity and jobs in coal slurry will not inevitably bring a subtraction of employment in railroading.

Thus, the pipeline promoters are presented with a conundrum: If coal production does increase dramatically, the public interest is better served through the greater employment that would occur through rail carriage of additional coal. If, on the other hand, today's less optimistic projections prove true, the public interest would be greatly damaged by the skimming away of a vital industry's most important traffic.

TAKE-OR-PAY CONTRACTS

Next, let us turn to the question of take-or-pay contracts.

Slurry promoters concede that such contracts, under which utilities would be committed to pay for huge quantities of coal—say 20 or 30 million tons a year—over long periods—say 25 or 30 years—are essential to the financing of pipeline construction. The capacity of a pipeline would be committed under such contracts before a spade of dirt is turned.

But, say the promoters, such contracts would be beneficial to the utilities because, even if the pipeline rate starts out slightly higher than the rail rate, inflation will eventually push the rail rate higher due to the greater labor intensity of rail operations.

But the premise upon which this view was based—persistent high inflation—is now undermined. The double-digit rates of inflation so common in past years are now gone. Both the rates of increase in the consumer price index and in the producer price index have dropped significantly in just 3 years—and Congress is pledged to keep those rates low to assure economic recovery.

But this is not all. The take-or-pay contract is equally unwise because there are numerous imponderables that could eventually cost the buyer of slurried coal—the users of electricity and taxpayers as well—far more than today's assumed market rates.

Slurry promoters are just unable to predict, with any degree of certainty, what the cost of building the pipeline will be—including the cost of the money borrowed to do so.

For example, in January 1981, ETSI officials asserted that their pipeline could be constructed for a cost of $1.8 billion. In March 1982, an ETSI official told an international technical conference that the cost had escalated to $3 billion; and by January 1983, according to the Wall Street Journal, the cost was up to $3.8 billion. One can only wonder what the cost figures will be by the time construction begins.

And these wide margins of error are not restricted to ETSI. They plague pipeline promoters in general. The Alyeska oil pipeline was originally estimated to cost $800 million—but the final cost was about $9 billion. The original estimated cost for the controversial Alaska-Canada natural gas pipeline was $10 billion. The most recent cost estimate for this pipeline is about $40 billion. Thus, any projection of pipeline costs must be considered suspect.

This is important to the public because, as Ronald Wasson, an official with Kansas City Power and Light Company, told the Senate Surface Transportation Subcommittee on September 13, 1982, if cost overruns occur, "The electric consumer would most likely end up paying [for them]."

Further, slurry promoters are just unable to predict the rate of inflation over the life of the 30-year contract; how long it will take—if, indeed, the time ever comes—before pipeline rates produce significant savings over the potential rail rate; whether coal in a solid state will still be an economical way to produce energy 25 years from now; and what reason there is to believe that transportation technology will remain static—as a pipeline in the ground must—for the next 30 years.

A miscalculation with regard to any of these questions could easily produce a situation in which consumers of electric power will find themselves paying far more than "market" prices—and the taxpayer might eventually be called upon to bailout these failing pipelines.

Once a utility enters into such an agreement, it is tied up for the length of the contract. It cannot switch fuels or buy coal from a less expensive source. If it does, it must still pay for the pipeline-delivered coal. There is no opportunity for users to extricate themselves from these contracts because, unlike multiple-use facilities and rolling equipment that can be moved, pipelines are frozen in the ground and capable of moving only one product from one fixed point to another.

We have seen, right here in the Washington area, the incredible phenomenon of "deregulated" natural gas being bought at a price substantially higher than the "market" price. Why? Because the buyer, fearing natural gas shortages, entered into take-or-pay contracts with certain producers a few years ago. When these contracts were signed, the prices may have seemed attractive. But now the buyer is locked into the arrangement and cannot take advantage of the lower prices that currently exist. This would be the situation of any coal user who signed a take-or-pay contract with a coal slurry pipeline.

While the take-or-pay contract has often been presented as a way of guaranteeing deliveries at an agreed-upon price, its real function for coal slurry pipelines is to take all the risk out of the project.

With a take-or-pay contract in hand, pipeline promoters can raise the money needed to build the pipeline, for there is little risk to the financial institution. As for the construction contractors, they will earn big profits from a major construction project.

If something goes wrong, the utility receiving pipeline coal is not likely to lose either, because most utilities routinely pass along the cost of fuel to their customers.

Who, then, are the people who can lose in all of this? If the pipeline rate turns out to be higher than other available coal rates, the utility customers pay the price for the mistakes of others.

Pipeline promoters are fond of talking about the Cadiz, Ohio, pipeline, built in the 1950s and closed in the early 1960s when railroads introduced unit-train rates for coal. They say the pipeline closed because it had "achieved its purpose" in lowering rail rates. However, if that pipeline had utilized a take-or-pay contract of the sort now planned as a pre-construction imperative for every coal slurry pipeline, the Cadiz pipeline would still be open and delivering coal at a rate above "market." It must be remembered that there was no take-or-pay contract at Cadiz because the pipeline was owned—pipe, pump and centrifuge—by the utility that used the coal.

If the take-or-pay contracts already in existence have worked to serve the public interest, that fact has not been discerned—so another vote is entered in the "No" column.

NO COMPETITION

This point leads quite naturally to the pipeline promoters' claim that their mode will provide needed competition for railroads. Given the take-or-pay contract, this argument is absurd. Once a take-or-pay contract is signed, the coal buyer is locked into the use of one fuel—coal—delivered by one mode—the pipeline—from one source.

If, as I suggested before, improved transportation technology results in a cheaper way to move coal, the buyer must ignore it.

If cheaper kinds of fuel present themselves, the buyer must ignore them.

If deliveries are interrupted for any reason—pipeline malfunction, a labor stoppage at the mine—the buyer has lost his principal means of obtaining needed coal.

Twice in the past 5 years, the United Mine Workers Union has engaged in protracted strikes. Because most coal is rail-delivered, utilities had many options available.

They could—and did—stockpile extra-large amounts of coal in anticipation of the strike. Pipelines move full. There is little chance to stockpile extra slurry—or to replace strike depleted stockpiles.

The utilities could—and did, in some cases—order coal from sources unaffected by the strike and have it delivered by rail. There is no way to change the route of a pipeline to obtain coal from a different source.

The utilities could—and did—order increased tonnages of coal after the strike to rebuild their stockpiles. Again, there is no way to do this with a pipeline.

Because a coal buyer, once signed to a take-or-pay contract, has no options, that buyer becomes far more of a "captive" than any railroad customer has ever been.

If Congress finally grants federal eminent domain and if coal slurry pipelines are built, what will result will be some initial competition for contracts—a competition made unfair by the railroads' requirement to operate as common carriers and the pipelines' freedom to offer services as totally dedicated contract carriers.

Once that has been sorted out, competition will cease.

In recent days, however, pipeline advocates have fastened on the actions of the Interstate Commerce Commission (ICC) as a justification for their claim.

In one case, the Commission proposed to alter existing regulatory review of rail rates on coal for domestic markets.

In another, the Commission has exempted from regulation coal shipped by rail for export.

Slurry advocates say these actions prove the need for new competition in coal hauling. This is illogical. The mandate contained in the 1976 Railroad Revitalization and Regulatory Reform Act—and broadened in the Staggers Rail Act of 1980—encourages the elimination of regulation whenever it is not needed to prevent abuses of market power.

Thus, these decisions represent a finding that sufficient competition already exists in coal transportation to prevent railroads from abusing their freedoms.

Indeed, we have seen such competition at work. Quite recently, an Eastern railroad renegotiated its contract to carry coal from a producer in West Virginia because it faced the certainty of losing that traffic to another railroad—serving a dif-

ferent producer. The new contract keeps the traffic for the railroad—and the producer.

In addition to competition among railroads, the Commission recognized the existence of intermodal, product and geographic competition.

As you are aware, the U.S. Army Corps of Engineers is engaged in a $3 billion project to link the coal fields of Tennessee and Kentucky to the Port of Mobile via the Tennessee-Tombigbee Waterway. Additionally, hundreds of millions of dollars are being spent annually by the Corps to improve navigation facilities on the Ohio and Mississippi River systems for the benefit of inland commercial barges which carry coal to improved port facilities at New Orleans and near Baton Rouge. And the removal of the debt-payback requirement for the St. Lawrence Seaway will make ships engaged in both the domestic and export coal trades on the Great Lakes and the Seaway even more competitive.

The movement of coal by truck to barge facilities and even power plants accounts for the movement of some 10 percent of all U.S.-produced coal, according to the Department of Energy. Also, many utilities have been switching to mine-mouth generation of electricity—which now accounts for some 15 percent of all U.S.-mined coal. Indeed, railroads are under constant competitive pressure from barges and trucks and mine-mouth generation alternatives.

Product competition refers to the ability of utilities—and steel mills—to use alternative forms of energy. Lower oil prices and market-based prices for natural gas are expected to make those alternative fuels very competitive with coal. Recent studies indicate that utilities have the option of making such changes—and are doing so. Further, new electric furnace technology is allowing steel mills to forsake coking coal in the manufacture of steel. Surely the long-term vested interests of the railroads require that rail transportation remain competitive as to price and service. As the ICC remarked, "carriers must charge competitive rates in competitive markets or lose the traffic."

Geographic competition refers to the ability of utilities—and foreign buyers—to obtain their coal from alternative locations. One recent ICC study found that more and more, utilities which believe they are "captive" to a single railroad can purchase electricity from other utilities—served by other railroads or other modes—through power exchange agreements. Foreign buyers of U.S. coal have access to coal from other competing nations—as do U.S. utilities. Again, the vested interests of the railroad industry require that rail transportation not price U.S. coal out of the market.

There is no more reason to believe that federal economic regulation of rail coal rates is needed to keep rail rates in check than there is in believing such regulation should replace market forces in the pricing of coal production.

As I have made clear on many occasions, rail coal rates over the past decade have increased far less than has the price of mine-mouth produced coal. Of course the price for rail coal transportation has increased. After our first oil crisis during the early 1970s, the public was skeptical—dampening efforts at energy conservation and the switch to alternative fuels. Following the second oil crisis in the late 1970s, there was not only a dramatic shift to coal, but forecasters were unamimous in their expectations of even greater market demand in the future—and the railroads met this new and expected demand by making unprecedented capital investments in plant and equipment. Virtually all main-line deferred maintenance was eliminated, state-of-the-art signalling and communication systems were installed to increase capacity, and rolling stock was replaced with larger-capacity equipment.

Coupled with strong demand for coal transportation and significant capital investment, rail coal rates naturally increased. After all, no prudent businessman will invest if the expected return on that investment is less than the cost of the capital needed for the investment. Once that investment was in place and was earning market rates, rail coal rates moderated considerably.

For the 27 months subsequent to the October 1, 1980, passage of the Staggers Act, rail coal rates have increased only one-half as much as during the 27 months directly preceeding passage of Staggers. And, since Staggers, average rail coal rates increased by only one percentage point more than the average of all rail rates—even though coal is alleged to be highly captive and even though the demand for rail coal transportation was much higher than for other commodities, most of which declined substantially due to recession.

Equally telling is the fact that coal rate increases during 1982 were the lowest for the past 9 years. And during the last six months of 1982, rail coal rates actually declined.

Furthermore, the effect of these rates has had a salutary effect upon electric utilities. For example, a principal proponent of coal slurry pipelines, Virginia Electric

Power Company, announced last week that it is reducing electric utility rates because of significant savings it has achieved through negotiation of coal hauling contracts with the Chessie System Railroad. Such contracts, made possible by the Staggers Act, are now being filed in unprecedented number with the Interstate Commerce Commission. Recent productivity improvements accruing from plant and equipment investments, more favorable labor agreements—coupled with the competitive market conditions I just focused on—are serving—and will continue to serve—as strong moderating influences on rail coal rates.

Coal represents 40 percent of our traffic, but accounts for only 23 percent of our revenues. No other single commodity even approaches the volume of traffic represented by coal. If the railroads are to survive, we cannot afford to lose our coal traffic—not to barges, not to trucks, not to mine-mouth generation, not to foreign producers, and not to coal slurry pipelines.

As the ICC's general counsel told attendees at a coal seminar in Houston recently, "The coal that doesn't move doesn't contribute to the railroad. To a fair degree, the railroad and mine operator are partners . . . It's in the interest of neither to deprive the other of an adequate profit (equal to at least the cost of capital)."

DAMAGE TO RAILROADS

Thus it is obvious that, rather than provide competition, coal slurry pipelines would simply seek to skim away the most profitable coal traffic, leaving railroads, as true common carriers, to serve those not considered desirable by pipelines.

I believe that it is safe to say that the spectre of deteriorating railroads is one that does not merely concern railroad stockholders. Throughout the 1970's, the Congress wrestled mightily with railroad problems seeking a way to make railroads financially viable through private enterprise. With the Staggers Rail Act of 1980, a giant step toward solution was taken.

Railroads responded well. Despite the severe downturn in traffic in 1981 and 1982, and its attendant losses in employment, railroads were able to survive through use of market freedoms made available by Staggers. No railroad went bankrupt in this recession.

But, take away a substantial share of the coal that is—by far—the largest single traffic and revenue source for our industry and all the effort put into Staggers will go for naught.

Since one must assume that the intent of Staggers was to serve the national interest in a healthy railroad system, it is difficult to see why the Congress would seek to undo its own work by fostering the development of a redundant transportation mode to siphon off the most profitable railroad coal traffic.

It is interesting to note in this connection that one difference between S. 267 and previous bills is that it contains no provision requiring a pre-certification determination as to the impact on existing carriers.

It is ironic in the extreme that this bill totally avoids any requirement to evaluate the consequences of proposed pipelines on railroads, their shippers and rail employees when these groups have been perceived by both opponents and supporters of this legislation to be among the interests most adversely affected.

The impact on railroads and on the shippers and communities dependent on them are predictable and quantifiable. Those coal customers left to the railroads will face higher rates because there will be fewer units of traffic over which rails may spread their fixed costs. Since there are practical limits on how much coal rates can be increased without putting producers out of business, rates on other rail-carried commodities will rise as well.

Even so, it will be impossible to recapture all of the lost revenues through rate increases. The Office of Technology Assessment in its 1978 report estimated that the superimposition of the coal slurry pipelines then planned upon the transportation system ultimately would result in lost net revenue to the railroads of about $700 million annually in 1971 dollars—which, when restated in 1982 dollars, equals or exceeds total earnings in every year since 1971. Moreover, at the time of the OTA study, only 5 pipelines were planned; now 13 with a total capacity of 250 million tons are on the drawing boards—meaning the losses could be more than double the original OTA estimate.

Since losses of this magnitude could not possibly be recouped through rail rate increases, the overall result would be a replay of the depressingly familiar picture from years recently past—increasing rail rates coupled with deteriorating rail services.

There is also the matter of the Railroad Retirement System, a separate—though similar to Social Security—federally administered retirement program for rail work-

ers. Declining employment in the rail industry has put a severe strain on the System.

As we speak, that System faces a crisis that has led the Railroad Retirement Board, in accordance with its responsibility under the law, to contemplate benefit cuts of up to 80 percent by 1984.

A recently negotiated agreement between rail management and rail labor—involving, for example, increased payroll taxes and retardation of the growth of future benefits—so as to prevent financial collapse of Railroad Retirement is being presented to Congress for consideration. However, according to the Railroad Retirement Board's calculations, the loss of 41,000 railroad jobs resulting from coal slurry pipeline construction would result in an 11-percent reduction in Railroad Retirement payroll taxes—plus put greater strain on the Railroad Unemployment Insurance Fund—which is already $400 million in debt. The railroads are already paying some 23 percent of annual payroll in retirement taxes, with employees paying nearly 9 percent. The new agreement contemplates an escalation of employee and employer taxes. By 1986, Railroad Retirement taxes will be about 36 percent of taxable payroll. A further increase of 10 percent would simply be beyond the capacity of the industry and its employees.

The activities of Congress over recent years to preserve rail service in the Northeast and improve the financial health of the national rail system through reduced regulation indicate that the public has a vital interest in a viable railroad system.

So here, too, the "public interest" vote must go against the pipeline proposal.

Another major drawback to slurry pipelines is the immense amount of water they require. This has been much discussed in the past and has been a great source of concern for farmers, ranchers, environmentalists and officals of water-short states. Indeed these interests—not often allied with railroads—have constituted a solid base of opposition to slurry pipelines over the years.

They can—and no doubt will—discuss the water problem with more cogency that I, so I will leave it to them. I bring it up at this time only because this particular part of the controversy has brought forth a formulation by slurry interests even more bizarre than their assertions about all the jobs they would provide.

If the job argument was Orwellian, then I must observe that the latest set of arguments with regard to water must be described as suitable only for fans of Lewis Carroll.

The water needs of pipelines are undeniable. It takes a ton of water to move a ton of coal. A 55-million-to-per-year pipeline, such as is planned in the East, would require 13 billion gallons of water per year—enough to drain the Potomac River for a week.

Slurry backers have consistently tried to write language into an eminent domain bill which would satisfy state officials that they would retain control over water within their states. Nothing they could do—or have done—has had a chance of satisfying those in states which would share a water source with a pipeline-originating state.

States "downstream" from a state offering to sell water to slurry pipeline promoters or states sharing an aquifer with a state offering to sell water have no power to protect themselves under this bill. These states may find that tremendous quantities of their water supplies are being drawn for projects which may adversely affect their citizens. Citizens of these affected states will find that crucial decisions on their water supplies are being made by officials not answerable to them. This legislation takes from the states the only remaining power they have to protect their water supplies. Water needs can be taken into account when states consider eminent domain, and state eminent domain power can be granted with appropriate conditions. This bill would destroy the sole method some states have for protecting their water supplies.

EMINENT DOMAIN

As noted in the beginning of this statement, S. 267 has often been described as a "simple" bill. Proponents point out that it asks for no federal funds. It asks simply that coal slurry pipeline builders be permitted to exercise the federal power of eminent domain in order to lay out the most efficient routes.

Such a desire is perfectly understandable. Certainly, there would be substantial costs involved in obtaining land for a route without such powers.

But that consideration is—or should be—irrelevant.

I have no doubt that there are many entrepreneurs who could benefit from government help of this sort. Perhaps there is a choice location for a factory in Ohio,

but the owners are reluctant to sell their land for this purpose. Should the company seeking to build be given eminent domain powers?

Suppose a person in Arlington wants to open an Amoco station on a busy corner but the land is owned by the Shell dealer across the street? Should the Shell dealer be forced to sell?

Of course, these are extreme examples. But they point up an important fact about eminent domain.

Eminent domain—state or federal—is not the same as obtaining a building permit or even a zoning change. The right of private property in this country is held to be so important that it is not to be set aside except for compelling reasons affecting the broad public interest.

Railroads have exercised eminent domain powers granted by states. They have been granted because the state governments saw that their citizens would be benefitted by the presence of railroads.

In the last century, railroads building across the West exercised federally granted powers of eminent domain in some cases. These powers were federal in nature because no states existed in those areas. But there was a determination that the railroad construction would be in the broad interest of the whole American public. But where is the determination that coal slurry pipelines benefit the public interest? We have not found it yet.

Let's try, quickly, some other claims they have made over the years.

Once, pipeline promoters claimed that they were needed because the nation lacked sufficent coal transportation capacity. One study after another—notably, studies by the Department of Transportation and the Office of Technology Assessment—concluded that existing transportation modes can easily keep pace with all projected increases in coal production and use. And the railroads proved this by hauling record volumes of coal over the last few years while still showing a surplus of coal equipment. The railroads presently have the long-term ability to haul 30 percent more coal without buying more coal cars or more locomotives. We have $3 billion in coal-related equipment ready to roll and nearly 100,000 employees waiting to be called back to work.

Pipeline promoters have also attempted over the years to assert that they can provide great savings to the consumers of electric power by delivering coal at lower rates than railroads.

If this were valid, one would assume it could be demonstrated—especially in studies commissioned by pipeline interests. Yet, in nearly 20 years of putting this argument forth, the best they have managed—in a study directed by a company planning to build a pipeline—is to claim that, 10 years after beginning, a pipeline to Georgia and Florida would save the residents of those states about 47 cents a month on their electric bills.

This was the finding of a study done by National Economic Research Associates for interests backing the planned Coalstream Pipeline in the East. To reach this conclusion, NERA had to assume that no coal would be transported to those two states by any other mode. Under that assumption, the projected savings to residential users, beginning in 1990, would be $31.3 million per year, according to NERA.

If that figure is divided among the current residents of Georgia and Florida, the result is 47 cents per month for each household.

Is this a definition of the public interest?

Does a saving of 47 cents a month warrant granting the right to cut a 1,500-mile-long, 100-foot-wide swath down the Eastern half of the nation against the wishes of property owners?

Does 47 cents a month justify the consumption and ultimate pollution of billions of gallons of water?

Does 47 cents a month justify crippling an industry that the Congress has—only 2 years ago—gone to great lengths to set on the path to financial health?

Does 47 cents a month justify the loss of 71,000 permanent jobs?

It is not enough for pipeline promoters to show that their mode is feasible.

It is not enough for them to claim that they need eminent domain to go into business. Every fledgling enterprise has needs which could be met by government.

It is not enough for them to show that other enterprises exercise powers similar to those they seek. Those enterprises have proven their relationship to the public interest. Slurry pipelines have not.

The builders of coal slurry pipelines must prove that they offer benefits to the broad general public of the United States that cannot be obtained in any other way and that the power of federal eminent domain is the only means by which can provide those benefits.

I submit that they have failed to make such a showing. On the contrary, the more we learn about coal slurry pipelines, their water needs, their operating imperatives and their potential impacts, the more it is clear that they should not be the beneficiaries of federal government promotion in the form of eminent domain powers.

TECHNICAL DEFICIENCIES

Finally, it must be recognized that there are serious technical deficiencies in S. 267, which is one of the shortest coal slurry bills ever introduced in Congress. Unfortuntely, in this case, brevity deserves no applause. As written, S. 267 hardly protects the public.

This bill would permit the exercise of eminent domain power by a coal slurry pipeline if construction of the pipeline would be in the national interest. Most of the coal slurry bills introduced previously have used the phrase "public convenience and necessity" in place of "national interest." These bills set forth a number of criteria the federal government would be required to consider in determining whether a pipeline would be in the public's interest. Examples of criteria used in the past are: whether or not a pipeline would impair the financial integrity of another carrier or the existing level of transportation services provided by a carrier; the extent to which existing carriers have the ability to meet the transportation needs that a pipeline would serve; the extent to which a pipeline would disrupt coal producing regions other than the one it served; and the impact a pipeline would have on water supplies. All of these factors are vital public considerations.

By contrast, to "aid" in the determination of whether a pipeling would be in the national interest, S. 267 uses four general and vague criteria and omits the critical issues of the impact of a pipeline on water supplies and railroads. In fact, S. 267 finds that "the construction of interstate coal pipeline distribution systems is a beneficial public use that justifies granting the Federal power of eminent domain.' The bill also finds that "the Nation's coal distribution system must include interstate coal pipeline distribution systems." The bill's findings, together with the useless criteria defining "national interest," lead inescapably to the conclusion that under S. 267 no pipeline promoter's scheme will be so closely examined that a negative decision might actually be reached on the question of whether the power of eminent domain should be granted.

This legislation addresses the transportation of coal. It is therefore inconprehensible that the Secretary of Energy would be given jurisdiction over coal slurry pipelines. The Interstate Commerce Commission is the one regulatory body with the most experience in coal transportation regulation. The absence from the eminent domain findings section of the impact on railroads criterion is no doubt tied to the use of the Energy Department rather than the ICC.

S. 267 would give pipelines a federal right of eminent domain, yet impose no obligations. Unlike railroads, coal slurry pipelines would have no common carrier obligations. Under the Staggers Act, of course, any shipper can challenge a contract which a railroad proposes to enter into with another shipper if that contract "unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligations to the complainant." In addition, the Interstate Commerce Commission is authorized to "limit the right of a rail carrier to enter into future contracts [if] additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations." Thus, in contrast to S. 267, the Staggers Act imposes obligations on top of already existing common carrier obligations for an industry with no federal right of eminent domain.

In addition, this bill does not require that the Department of Transportation promulgate pipeline safety regulations, as have most previous coal slurry bills. There are no common carrier obligations, no safety regulations. Congress would ask for nothing from pipelines in return for the granting of the power of eminent domain.

Finally, there is the water issue. Coal pipeline promoters after all these years have still failed to satisfy those concerned about this nation's dwindling water supplies. This bill does not even address the problems of a shared aquifer being drawn down by one state for use in a pipeline or a state using river water for a pipeline to the detriment of downstream states.

CONCLUSION

The railroad industry opposes this legislation for obvious reasons. We believe that government promotion of a redundant one-commodity contract carrier of coal, which will operate in a manner denied to the common carrier railroads, cannot help but damage our industry severely.

To the extent that a healthy railroad system is important to the national interest, our concerns should also be considered in the light of public policy.

However, railroads are not alone in opposing eminent domain powers for coal slurry pipelines. Attached to this statement is a list of some 57 organizations which have registered opposition to this legislation in the past—27 of whom signed an advertisement (also attached) last year in opposition to the legislation before the 97th Congress.

I do not speak for these groups. Among them, you will find interests not usually aligned with those of the railroads. I call them to your attention because I think it important to make clear that this is by no means just a railroad versus pipeline issue. There are important public policy issues to be decided.

Thus, while S. 267 may have a simple goal, it is most certainly not a simple bill.

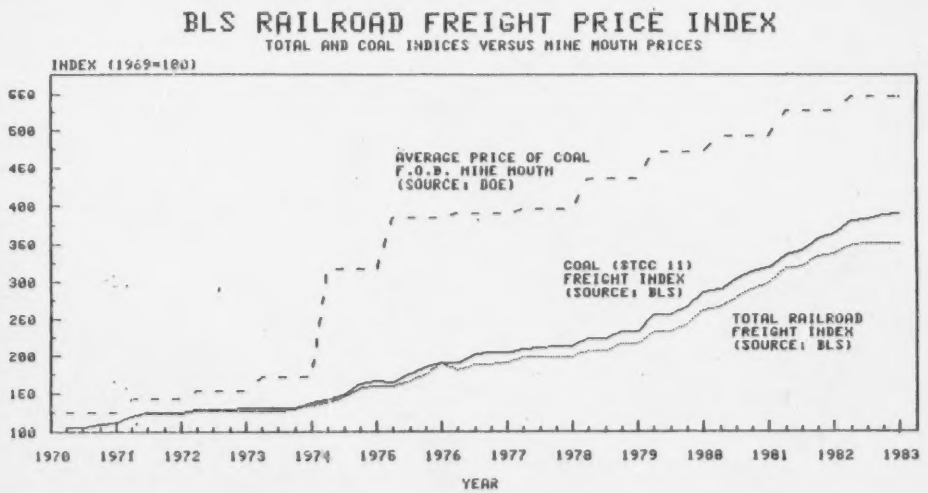
It is a measure with profound implications and, in the opinion of the railroads and many others, disastrous consequences. I urge its defeat.

JOB PRODUCTION PER $1 BILLION REVENUE ACCORDING TO BUREAU OF LABOR STATISTICS METHODOLOGY

Industry sector [1]	Rail transportation	Rail equipment manufacturer	Pipeline transportation
Agriculture, forestry, and fisheries	86	147	30
Mining [2]	224	386	724
Maintenance and repair construction	2,084	206	468
Manufacturing	2,662	21,821	737
Transportation	17,482	1,008	2,788
Communications	150	144	45
Electric gas and sanitary service	167	233	169
Trade	1,265	2,013	377
Finance, insurance, and real estate	607	671	430
Other services	1,547	1,769	600
Government enterprises	210	238	59
Special industries	.....	.....	.....
Total	26,484	28,636	6,427

[1] These subheadings comprise 156 separate segments.

[2] The additional mining jobs from pipeline transportation are in crude petroleum and natural gas. In terms of coal mining, the investment in rail transportation produces 34 jobs vs. 28 for the same investment in pipeline transportation.



[The following information was subsequently received for the record:]

ASSOCIATION OF AMERICAN RAILROADS,
Washington, D.C., May 24, 1983.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DANFORTH: At the coal slurry hearing over which you presided, I promised to supply for the record what the AAR has in the way of statistics on rail coal rate increases. Attached are eight tables with statistics on rail coal rates. The findings of the tables are summarized below.

Table 1. The average price of coal has increased more than the average rail rate since 1970. In fact, although this table begins with 1970 statistics, in 1969 rail coal rates represented more than 38 percent of the delivered price of coal, versus 30.5 percent in 1982. This is true even though the average length of a coal haul has increased due to the greater use of Western coal.

Table 2. Railroad coal rates per ton-mile have increased less than the rate of railroad inflation.

Table 3. Railroad coal rates, in constant dollars, have declined.

Table 4. Railroad coal rates have increased less in the 29-month period since passage of the Staggers Act than they did in the 29-month period prior to enactment of the Staggers Act.

Table 5. Since the passage of Staggers, increases in utility rates have exceeded increases in rail coal rates.

Table 6. In 1981, coal accounted for 36 percent of rail tonnage, but only 20 percent of rail revenue. In 1982 the figures were 41 percent and 24 percent, respectively. It is evident from the fact that the increase in tonnage that any increase in coal rates has not been significantly greater than the increase in rates on other commodities moving by rail.

Table 7. This table shows that since the enactment of Staggers, coal rates have increased twenty-two percent, about the same percentage increase as many consumer goods and only slightly greater than the percentage increase for all commodities. The difference between the rail rate statistics for coal and all commodities is probably overstated since contract rates are not included. A large amount of coal moves under contract at rates below published tariff rates.

Table 8. Since 1972, revenue per ton-mile for coal has increased by the same percentage as revenue per ton-mile for all commodities. This shows that, contrary to the contentions of the electric utilities and coal producers, the railroads are not discriminating against coal vis-a-vis other commodities in establishing rates.

Slurry proponents, when discussing rail rates, invariably select a two or three year period to illustrate that rail coal rates are supposedly increasing at an alarming rate. We could take a similar tack and point out that, from 1972 to 1975, coal prices increased at an average annual rate of 39 percent, while rail coal rates only increased at an average annual rate of 11 percent. Special circumstances usually underlie such short-term variations. The longer term statistics in the enclosed tables depict more accurately the facts with respect to the pricing actions of the railroads, the utilities and the coal producers. There is nothing in that data to suggest that the pricing of coal movements has been unreasonable or discriminatory.

Sincerely,

WILLIAM H. DEMPSEY, *President.*

TABLE 1.—THE AVERAGE PRICE OF COAL HAS INCREASED MORE THAN RAILROAD COAL RATES PER TON

Year	Average price of coal, F.O.B. mine per ton [1]	Average rail revenue per ton [2]	Rail rate as a percentage of destination price
1970	$6.26	$3.42	35.3
1971	7.07	3.70	34.4
1972	7.66	3.67	32.4
1973	8.53	3.78	30.7
1974	15.75	4.71	23.0
1975	19.23	5.25	21.4
1976	19.43	5.86	23.2
1977	19.82	6.48	24.6
1978	21.78	7.32	25.2
1979	23.50	8.15	25.8

Footnotes at end of table.

TABLE 1.--THE AVERAGE PRICE OF COAL HAS INCREASED MORE THAN RAILROAD COAL RATES PER TON—Continued

Year	Average price of coal, F.O.B. mine per ton [1]	Average rail revenue per ton [2]	Rail rate as a percentage of destination price
1980	24.65	9.49	27.8
1981	26.29	11.33	30.1
1982 [3]	27.30	11.96	30.5

[1] Department of Energy.
[2] Freight Commodity Statistics, Interstate Commerce Commission.
[3] Preliminary.

TABLE 2.—RAILROAD COAL RATES PER TON-MILE HAVE INCREASED LESS THAN THE RATE OF RAILROAD INFLATION

Year	Railroad inflation [1]	Rail coal revenue [2] per ton-mile		Rail coal revenue per ton-mile as percent of railroad inflation
		Cents	Index	
1972	100.0	1.25	100.0	.....
1973	112.3	1.28	102.4	91.2
1974	128.3	1.48	118.4	92.3
1975	146.0	1.59	127.2	87.1
1976	161.7	1.65	132.0	81.6
1977	175.4	1.51	120.8	68.9
1978	190.3	1.81	144.8	76.0
1979	214.2	2.07	165.6	77.3
1980	245.7	2.26	180.8	73.6
1981	276.6	2.51	200.8	72.6
1982	295.2	([3])	([3])	([3])

[1] Measured by "Series QMPW" from 1972 to 1977 and the "Railroad Cost Recovery Index" from 1977 to 1982. Both series are constructed by the Association of American Railroads.
[2] Carload Waybill Statistics, Statement TD–1 Interstate Commerce Commission and Department of Transportation. (Waybill statistics were not published in 1970 and 1971.)
[3] Not available.

TABLE 3.—RAILROAD COAL RATES PER TON-MILE, IN CONSTANT DOLLARS, HAVE DECLINED, 1972–1981

	Current dollars (Cents)	Constant 1972 dollars (Cents)
1972	1.25	1.25
1973	1.28	1.13
1974	1.48	1.10
1975	1.59	1.08
1976	1.65	1.07
1977	1.51	0.93
1978	1.81	1.03
1979	2.07	1.05
1980	2.26	1.00
1981	2.51	1.02

Source: Column 1—Carload Waybill Statistics, Interstate Commerce Commission. (Waybill Statistics were not published in 1970 or 1971.) Column 2—Deflated per Producer Price Index, Bureau of Labor Statistics.

TABLE 4—RAILROAD COAL RATES HAVE INCREASED LESS SINCE STAGGERS THAN IN A COMPARABLE TIME PERIOD BEFORE THE ACT (29 MONTHS)

Time period	BLS coal freight rate index	
	1969 = 100	Base month = 100
May 1978	222.5	100.0
October 1980	318.1	143.0
Average annual increase (percent)		17.8
Oct. 1980	318.1	100.0
March 1983	390.4	122.7
Average annual increase (percent)		9.4

Source: Bureau of Labor Statistics.

TABLE 5.—INCREASES IN UTILITY RATES HAVE EXCEEDED INCREASES IN RAILROAD COAL RATES SINCE THE STAGGERS ACT

	BLS: Railroad coal rates [1]	Average consumer utility price index, utility (piped) gas (40 therms) [1]	Average revenue per kWh sold, electric utility industry [2]
Oct. 1, 1980	100.0	100.0	100.0
4th quarter 1980	100.2	99.9	101.0
1st quarter 1981	105.9	102.8	104.3
2nd quarter 1981	107.6	108.1	107.5
3d quarter 1981	112.7	113.2	111.4
4th quarter 1981	114.9	118.0	114.9
1st quarter 1982	119.9	121.6	126.3
2d quarter 1982	120.2	131.0	129.0
3d quarter 1982	122.1	132.9	131.3
4th quarter 1982	122.1	143.5	132.7

[1] Bureau of Labor Statistics.
[2] Edison Electric Institute.

TABLE 6.—COAL ACCOUNTS FOR 36 PERCENT OF RAIL TONNAGE AND ONLY 20 PERCENT OF REVENUES, YEAR 1981

STCC number and commodity	Percent of total tons	Percent of total revenues	Rank	
			Tons	Revenues
11 Coal	36.3	20.2	1	1
01 Farm products	9.6	8.9	2	4
10 Metallic ores	7.8	2.4	3	12
14 Nonmetallic minerals	7.6	3.5	4	10
28 Chemicals and allied porducts	7.3	11.1	5	2
20 Food and kindred products	5.7	9.9	6	3
24 Lumber and wood products	5.5	5.3	7	7
33 Primary metal products	3.7	5.3	8	8
32 Stone, clay, and glass products	3.4	3.8	9	9
26 Pulp, paper, and allied products	2.9	6.2	10	6
29 Petroleum and coal products	2.7	3.4	11	11
40 Waste and scrap material	2.3	1.9	12	13
37 Transportation	1.5	7.2	13	5
Subtotal	96.3	89.1		
All others	3.7	10.9		
Total	100.0	100.0		

Source: Freight Commodity Statistics, Interstate Commerce Commission.

TABLE 7.—INCREASES IN RAIL COAL RATES SINCE THE STAGGERS ACT VERSUS INCREASES IN RATES FOR ALL COMMODITIES

Period	Coal rates		All commodities	
	BLS index (1969 = 100)	(October 1 1980 = 100)	BLS index (1969 = 100)	(October 1 1980 = 100)
Oct. 1, 1980 [1]	318.0	100	298.1	100
November	318.1	100	298.9	100
December	319	100	299.9	101
1981:				
January	333.5	105	313.9	105
February	336.7	106	317.2	106
March	340.4	107	321.0	108
April	341.2	107	320.9	108
May	341.2	107	321.3	108
June	344.4	108	324.1	109
July	357.9	113	332.8	112
August	357.9	113	333.8	112
September	359.0	113	333.3	112
October	365.3	115	337.9	113
November	365.3	115	337.9	113
December	365.3	115	337.8	113
1982:				
January	380.6	120	350.3	118
February	380.6	120	350.6	118
March	380.6	120	350.6	118
April	380.9	120	351.4	118
May	382.6	120	351.6	118
June	382.4	120	351.5	118
July	388.4	122	352.0	118
August	388.4	122	352.0	118
September	388.5	122	351.9	118
October	388.5	122	351.9	118
November	388.9	122	351.9	118

[1] Average September–October.

Source: USDL, Bureau of Labor Statistics.

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TABLE NO. 8

COAL TRAFFIC VS. TOTAL TRAFFIC

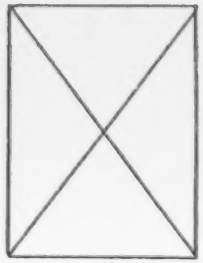
COAL

Year	Tons of Coal Originated: Tons (Millions)	Tons of Coal Originated: Index	Carloads Originated - Coal: CLS(000s)	Carloads Originated - Coal: Index	Revenue From Coal: Amount (Millions)	Revenue From Coal: Index	Revenue Per Ton Originated-Coal: Amount	Revenue Per Ton Originated-Coal: Index
1971	361	100	4646	100	$ 1336	100	$ 3.70	100
1972	375	104	4675	101	1379	103	3.67	99
1973	376	104	4628	100	1426	107	3.78	102
1974	391	108	4691	101	1848	138	4.71	127
1975	408	113	4844	104	2146	161	5.25	142
1976	407	113	4645	100	2385	179	5.86	158
1977	415	115	4809	104	2698	202	6.48	175
1978	383	106	4372	94	2813	211	7.32	198
1979	474	131	5329	115	3873	290	8.15	220
1980	522	145	5789	125	4956	371	9.49	256
1981	528	146	5835	126	5977	447	11.33	306
1982	524	145	5718	123	6307	472	12.04	325

Year	Average Price Per Ton (FOB Mine): Amount	Average Price Per Ton (FOB Mine): Index	BLS Index - Coal: (1969=100)	BLS Index - Coal: (1971=100)	Revenue Per Ton-Mile - Coal: Cents	Revenue Per Ton-Mile - Coal: Index (1972=100)
1971	$ 7.07	100	123.9	100	N.A.	N.A.
1972	7.66	108	128.3	104	1.25¢	100
1973	8.53	121	132.5	107	1.28	102
1974	15.75	223	154.8	125	1.48	118
1975	19.23	272	177.5	143	1.59	127
1976	19.43	275	199.6	161	1.65	132
1977	19.82	280	211.6	171	1.51	121
1978	21.78	308	228.2	184	1.81	145
1979	23.50	332	266.2	215	2.07	166
1980	24.65	349	306.3	247	2.26	181
1981	26.29	368	350.7	283	2.51	201
1982	27.30	386	385.0	311	--	--

TOTAL TRAFFIC

Year	Tons Originated: Tons (Millions)	Tons Originated: Index	Carloads Originated: CLS(000s	Carloads Originated: Index	Revenue: Amount (Millions)	Revenue: Index	Revenue Per Ton Originated: Amount	Revenue Per Ton Originated: Index
1971	1391	100	25172	100	$12247	100	$ 8.80	100
1972	1448	104	25703	102	13013	106	8.99	102
1973	1532	110	26990	107	14335	117	9.36	106
1974	1530	110	26223	104	16378	134	10.70	122
1975	1395	100	22930	91	15899	130	11 40	130
1976	1407	101	23055	92	17935	146	12.75	145
1977	1395	100	22823	91	19394	158	13.90	158
1978	1390	100	22477	89	20784	170	14.95	170
1979	1502	108	23411	93	24286	198	16.17	184
1980	1492	107	22223	88	26937	220	18.05	205
1981	1453	104	21343	85	29590	242	20.36	231
1982	1268	91	18585	74	26504	216	20.89	237



Year	BLS Index All Commodities: (1969=100)	BLS Index All Commodities: (1971=100)	Revenue Per Ton-Mile: Cents	Revenue Per Ton-Mile: Index (1972=100)
1971	122.4	100	1.59¢	98
1972	126.1	103	1.62	100
1973	129.3	106	1.62	100
1974	149.7	122	1.85	114
1975	169.4	138	2.04	126
1976	186.6	152	2.19	135
1977	199.1	163	2.29	141
1978	213.1	174	2.36	146
1979	243.3	199	2.60	160
1980	284.5	232	2.85	176
1981	327.6	268	3.18	196
1982	351.4	287	3.20	201

SOURCE: ICC Reports, Department of Energy and Bureau of Labor Statistics.

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QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question 1.—Your statement before the Committee indicated that the construction of coal slurry pipelines would have a detrimental impact on rail labor. Apart from the coal slurry issue, is railroad employment projected to increase, remain steady, or decline? How would these projections be affected by the existence of coal slurry pipelines?

Answer 1.—It is impossible to project, with accuracy, employment trends in the railroad industry because reilroad employment is so closely tied to the state of the economy. In 1981 amendments to railroad retirement laws were passed in order to ensure the solvency of the railroad retirement system. At that time, however, no one foresaw the possibility that the recession would be so severe that railroad employment would fall from 514,000 in July of 1981 to approximately 388,000 in January of 1983. As a result, the railroad retirement system again faces financial difficulties. This example shows that we cannot even project what railroad employment will be a year from now because we do not know the extent to which there will be an economic recovery.

In my testimony before the Surface Transportation Subcommittee we addressed in detail the impact coal slurry pipelines would have on railroad employment. Using the Bureau of Labor Statistics methodology relied upon by coal slurry proponents, a switch of 250 million tons of coal from railroads to pipelines will annually cost the railroad industry 41,000 jobs and industries associated with railroads 30,000 jobs. By contrast, slurry pipelines will require only 22,000 jobs annually, assuming coal slurry pipelines would generate revenues for transporting the 250 million tons equivalent to the revenues that would be generated by rail transportation. Thus, the substitution of capital intensive pipelines for labor intensive railroads would have a severe impact on employment.

Question 2.—In your testimony, you state that there are many moderating influences on rail coal rates. In this regard, for the record could you cite specific examples of "recent productivity improvements accruing from plant and capital equipment investments and more favorable labor agreements" that you reference and their impact on coal rates? Also, apart from examples relating to the Chessie Railroad, are there other examples of reduced rail rates for the movement of coal as a result of contract negotiations?

Answer 2.—There are many examples of productivity improvements. Recent labor agreements will enable railroads to reduce crew size and negotiate the elimination of cabooses. There have been agreements lessening the restrictions on using rail yard employees for non-yard work and vice-versa. Conrail and the Milwaukee Road have obtained wage concessions. Apart from employment, the railroads have engaged in programs to increase fuel efficiency and formulate less costly fuels, increase the use of computerization, improve rails, and improve rail car utilization. Since 1970, labor costs per dollar of revenue have decreased from 50 cents to 45-½ cents. In that time period, revenue ton-miles per employee have increased fifty-three percent.

While it is impossible to tie productivity improvements directly to rates, the improvements in productivity may be partly responsible for the decline in railroad coal rates per ton mile in real dollars. Using 1972 dollars, the average railroad coal rate in 1972 was 1.25 cents per ton-mile, as compared to 1.02 cents in 1981 (see Table 1).

Many railroad coal transportation contracts have been signed. The rail rates included in these contracts are confidential and unavailable to the AAR, but certainly utilities would not be signing these contracts unless they would receive a better bargain, whether that be through reduced rates or some other benefit with a monetary equivalent.

Question 3.—Much attention has been focused on the types of contracts entered into between the railroads and shippers, and particularly coal and utility customers. What types of provisions are included in such contracts? Are there minimum tonnage requirements, market adjustment clauses, or renegotiation clauses? How are they regulated?

Answer 3.—Railroad contracts are confidential because of the proprietary information they contain and are not available to the AAR. The ICC publishes the essential terms of the contracts in summaries. A perusal of these summaries indicates that some coal contracts have escalation clauses if that is what is meant by the phrase "market adjustment clauses." It is our understanding that some railroad contracts have tonnage requirements and renegotiation provisions, although the provisions vary widely.

Railroad contracts are regulated under 49 U.S.C. § 10713. A contract may be disapproved if it would impair the ability of the rail carrier to fulfill its common carrier obligations. This section also imposes restrictions on contracts that may discriminate against a port or that discriminate against a shipper of agricultural commodities.

Question 4.—You have indicated that: "for the 27 months subsequent to the passage of the Staggers Act, rail coal rates have increased only one-half as much as during the 27 months directly preceding the passage of Staggers. And since Staggers, average rail coal rates increased by only one percentage point more than the average of all rail rates . . . ." For the record, would you cite some specific rate changes as background for this statement? How would you explain this moderation in coal rates since the passage of Staggers? How does this moderation compare with the ultimate cost of the coal, and with the cost of coal at the mine-mouth?

Answer 4.—Specific rate data is not generally available to the AAR. The source for the data in my statement is the coal freight rate index of the Bureau of Labor Statistics.

There are a number of reasons for the moderation in coal rates. The Staggers Act, of course, has given the railroads the tools to price competitively. In a competitive environment, one would expect coal rates to moderate in a time of recession and relatively plentiful energy supplies. Since the coal transportation business is competitive, contrary to the assertions of slurry proponents, coal rates have acted accordingly. Thus, coal rates have moderated because of competition between railroads, competition between coal, oil, and natural gas, and the lessening of demand due to the recession.

The average price of coal has increased more than the average rail rate since 1970. Table 2 shows that the rail rate as a percentage of the destination price has decreased from 35.3 percent in 1970 to 30.5 percent in 1982. This is true even though the average length of a coal haul has increased due to the greater use of Western coal.

Question 5.—In your statement, you have cited several problems regarding the "findings" in S. 267, the coal slurry legislation pending in the Senate, particularly as they relate to the determination that an interstate coal pipeline is in the "national interest." What modifications would you make in these findings, or in the process for making these determinations?

Answer 5.—As I stated in my testimony on S. 267, past coal slurry bills have set forth criteria the federal government would be required to consider in determining whether a pipeline would be in the public's interest. At a minimum, S. 267 as introduced should be amended to require these additional findings: whether or not a pipeline would impair the financial integrity of another carrier or the existing level of transportation services provided by a carrier; the extent to which existing carriers have the ability to meet the transportation needs that a pipeline would serve; the extent to which a pipeline would disrupt coal producing regions other than the ones it served; and the impact a pipeline would have on water supplies.

It should be emphasized that to give meaning to any requirement that a certificating body must consider certain factors, there should also be a requirement that a decision granting a certificate contain explicit findings on those factors, including a statement explaining the basis for those findings.

Question 6.—Concern has been raised about the possibility of a utility owning a pipeline, thereby creating vertical integration. Comparisons have been made with rail carriers transporting coal which they own at the time. For the record, to what extent do rail carriers transport what coal they own, and what impact does this arrangement have on the ultimate cost to the consumer? To what extent would such an arrangement be regulated?

Answer 6.—It is my understanding that, except for timber, a railroad cannot transport goods which it owns, has an interest in, or are manufactured, mined, or produced by it. The prohibition includes affiliated companies which are not under management independent of the railroad. A railroad, of course, can transport any goods intended for use in its own business. (See 49 U.S.C. § 10746).

Senator Danforth: Thank you, Mr. Dempsey.

Mr. Crawford.

STATEMENT OF JAMES B. CRAWFORD, VICE CHAIRMAN OF THE SLURRY TRANSPORT ASSOCIATION BOARD OF DIRECTORS AND PRESIDENT OF TRANSCO COAL CO.

Mr. CRAWFORD. Chairman Danforth, Senator Long, I thank you for the opportunity to present the compelling reasons why we believe coal pipelines should be built. I have submitted my prepared testimony and I would be pleased to answer any questions that you may have. As is the custom, I will limit my opening remarks to a brief summary of my conclusion.

First, I would like to outline the fundamental issues which create the opportunity and necessity for alternative transportation, namely growth in coal consumption, competitive transportation alternatives and the favorable economics of coal pipelines versus railroads.

Second, I would like to present the reasons why, in my humble judgment, relying on State eminent domain legislation would be sheer folly.

Transco Coal Co. is a subsidiary of Transco Energy Co. Our eastern Kentucky coal operations produce steam and metallurgical coal. Our parent company, Transco Energy Co., operates a 1,800-mile interstate gas pipeline system and produces oil and gas.

In September 1982 Transco and Virginia Electric & Power Co. formed a joint venture to develop a coal pipeline from southwest Virginia to the port of Hampton Roads. Our partnership is unique, for it combines the experience and operating skills of the 11th largest public utility with a diversified energy company which operates one of the Nation's largest pipeline systems.

The question before us is, Why are coal pipelines necessary and in the economic best interest of the Nation? The answer is as follows:

First, coal production growth. The consensus of government and private forecasters is that coal production will continue to increase dramatically through the remainder of the century. Agreement has been virtually unanimous. In fact, CSX Corp., in a recent Wall Street Journal article, stated:

> CSX Corp. is the world's number one coal-hauling system. Each year the CSX railroads haul more coal for domestic and export use than anyone else in the world. According to coal industry predictions, consumption in the U.S. should jump by 85 percent by 1995 to 1.5 billion tons. Reliable industry figures show exports going from 90 million tons to 175 million tons in that same period.

Second, coal pipeline economics. Coal pipelines move bulk commodities continuously at low operating costs. Pipelines have relatively low labor, supplies, and maintenance costs in comparison to railroads. There are no roadbeds to maintain, cars to switch, freight yards to operate, locomotives to repair, or diesel fuel to purchase.

In short, pipelines are capital intensive and railroads are operating cost intensive. Due to these basic economic factors, pipelines become significantly less expensive to operate at higher throughputs. Our studies indicate that the cost to operate a 400-mile pipeline from southwest Virginia to the port of Hampton Roads would be $7.55 per ton, or 2 cents per ton-mile, at a throughput of 25 million tons per year.

Similarly, the Black Mesa pipeline in Arizona, which is the only operating pipeline in the United States, and which is owned and operated by the Southern Pacific Railroad, operates a 273-mile pipeline. The annual throughput is 4.8 million tons and transportation cost is 1.5 cents per ton-mile.

Third, comparative railroad rates. There are two economic factors to consider: first, the relative cost of transporting coal by pipeline is expected to be significantly cheaper than by railroads. As stated, we expect to move coal at approximately 2 cents per ton-mile.

By comparison, the Norfolk & Southern Railroad rate of $19.45 from Wise, Va., VEPCO's Portsmouth power station is 4.9 cents per ton-mile. A survey of 10 eastern train utility coal movements indicates an average rate of 3 cents per ton-mile. I would be glad to furnish such detailed information if it would be helpful to the committee.

The second economic factor to consider is the escalation of railroad rates. Since 1978 VEPCO's railroad rates have increased by 68 percent.

Remembering that railroad rates are approximately 70 percent operating costs, the escalation of railroad rates based upon variable costs will make railroads even less competitive in the future unless profit margins are reduced.

Fourth, railroad monopoly; 65 percent of all the coal currently produced in the United States is shipped by rail. Of that amount, 85 percent is captive. That is, there is no shipping alternative.

Let me dispense with additional facts and figures. The conclusions are crystal-clear:

One, coal production will continue to increase;

Two coal pipelines offer a cheaper mode of transportation;

Three, railroad rates have escalated faster than inflation in recent years;

Fourth, railroads enjoy a virtual monopoly on coal transportation.

The controversy, simply stated, is whether competition in moving coal should it be encouraged or blocked? The answer is obvious.

Now let us turn to the second issue, Federal enabling legislation. Virginia, as you well know, is a State blessed with abundant coal reserves and the world's largest coal port. In addition, Virginia is the headquarters of two of the Nation's largest railroad systems, CSX and Norfolk-Southern.

Our State also has the distinction of being the only State in the Nation with a prohibition against the use of eminent domain for coal slurry pipelines.

By way of background, on January 19, 1983, the Virginia Coal Pipeline Act was introduced in our general assembly. The legislation was comparable to the Federal legislation. It did not seek permission to construct a pipeline, but rather to establish a process under which proposals could be considered.

In order to construct a pipeline, a certificate of public convenience and necessity would be required by the State public service commission. In addition, the commission would have to determine that the pipeline was economically feasible, that the proposed route of the pipeline would serve the public interest, and the proposed

pipeline would operate in full compliance with all State environmental protection laws, expressly including water use laws.

In short, the legislation proposed a method of certification that would enable coal pipelines to use the power of eminent domain, which is now available to other public service companies in the State. Yet the issue was defeated.

Why is Federal eminent domain necessary? On the surface, eminent domain law would appear to be comparable State by State. However, the benefits of pipelines will cross State lines. The fundamental issue is alternative transportation to interstate railroad systems.

The State grant of eminent domain is based upon a determination of public use and benefit to the State. A pipeline that merely passes through a State may have little or no benefit to that particular State, but it may have a great benefit to the Nation as a whole.

No. 2, the determination of public use and benefit varies among States. For example, in West Virginia public necessity is determined by the public service commission. In Alabama it is the corporation commission. In Texas it is the railroad commission.

There is no uniformity among State laws. Some States which grant eminent domain authority would require that the pipeline be incorporated in the State or be domesticated under the laws of the State.

Once constructed, an operating pipeline would be subject to State regulation as a common carrier. That would be overlapping reporting responsibilities and conflicting regulatory procedures. We are not raising issues regarding possible parochial State interests. We are talking about changing State laws to permit the practical operation of interstate pipelines.

In conclusion, if I could leave you with two messages today they would be: First, individual State eminent domain laws deal with public convenience and necessity within the State boundary. Applying State authorization and regulation to an interstate pipeline would be unworkable.

Second, and most importantly, a major interstate gas pipeline company, Transco, and a large public utility, Vepco, both of whom believe in the free enterprise system, enthusiastically support a coal pipeline that would benefit the Nation and the Commonwealth of Virginia.

The time for enabling legislation is now and we hope that you will support S. 267.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JAMES CRAWFORD, VICE CHAIRMAN, SLURRY TRANSPORT ASSOCIATION

Mr. Chairman and members of the Committee, I am James Crawford, Vice Chairman of the Board of Directors of the Slurry Transport Association and President, Transco Coal Company. The Slurry Transport Association, headquartered in Washington, D.C., is an organization of 66 domestic and foreign companies and individuals that are interested in the construction and operation of pipelines, particularly coal pipelines.

Coal pipelines can provide substantial economic and energy benefits to our nation as supplemental and alternative method of transporting coal. The benefits of coal pipelines are most pronounced in interstate systems that transport large quantities

of coal over long distances. In most cases, however, interstate coal pipelines can only be developed if legislation such as H.R. 1010 and S. 267 is enacted to grant such systems the Federal power of eminent domain—the same power that was granted during their formative stages to our nation's intercontinental railroads, interstate gas pipelines and certain interstate petroleum pipeline.

The purpose of my testimony will be to discuss the benefits of coal pipelines and the reasons that legislation granting the Federal power of eminent domain to interstate coal pipelines is both necessary and in the national interest. I appreciate the opportunity to appear before you today.

I. INTERSTATE COAL PIPELINES—A DESCRIPTION

The term "interstate coal pipelines" covers a number of methods for transporting coal. The two coal pipelines that have been developed in the U.S. mix coal and water in a "slurry" for transportation. However, various companies and researchers have considered using methanol, liquefied carbon dioxide and petroleum as the medium for the pipeline transportation of coal. At least one company is considering the development of a pipeline that would use a medium of brine to transport coal in some form of container. The definition of "coal pipeline" that is contained in S. 267, as reported, is sufficiently broad to cover all of these coal pipeline systems.

Because the coal pipelines that are in existence today and that are most likely to be developed use water as the medium of transportation, I will briefly describe a typical interstate coal "slurry" pipeline system.

In such a system, coal is gathered from mines by pipeline, rail, truck or conveyor belts and delivered to one or more preparation facilities. At the preparation facility, the coal is mixed, cleaned and treated, if necessary, then crushed to the particle size of sugar and mixed with water at the rate of one ton of coal to one ton of water. The resulting slurry of coal and water is stored in tanks with mechanical agitators to prevent settling. From the storage tanks, the slurry is introduced into a buried steel pipe and is propelled through the pipe at a velocity of approximately 6 feet per second by a series of pump stations that are located at intervals of 50 to 150 miles, depending on the terrain, pipe size and other such design considerations. No water is added to the slurry after the the slurry is introduced into the buried steel pipe for transportation.

At the delivery end of the pipeline, the slurry is introduced first into agitated tank storage, from which it is fed into a dewatering facility. Dewatering is accomplished by natural settling, vacuum filtration and by centrifuge. Any finely ground coal still suspended in the water can be separated by known technology. After additional drying by the application of heat, the coal is then stored, transported further by other modes, or introduced directly into grinding equipment at a power plant and injected into the boilers. The water reclaimed from the slurry normally will be used in an electric generating station's cooling system to condense steam or will be cleaned for discharge. Attachment 1[1] provides a schematic of the various operations that are included in a coal pipeline system.

The discharge of water used in a coal slurry mixture is subject to Federal, state and local environmental laws. The Clean Water Act, formally called the Federal Water Pollution Control Act, establishes minimum quality standards and prohibits the discharge of any water which does not meet these standards. Before water can be discharged, permits must be obtained and permit holders must prove that all applicable standards will be met. The Act also authorizes the Administrator of the Environmental Protection Agency to delegate to states certain aspects of water pollution control. Consequently, states have enacted water pollution laws and established agencies to administer them.

A current example of the application of state and Federal water pollution control law to the water used in coal pipelines is the ETSI Pipeline Project, a proposed coal pipeline running from Wyoming to Arkansas and other southern states. A final Environmental Impact Statement has been issued for the proposed pipeline, as required by the National Environmental Policy Act. It examined the environmental effects of discharging the water used in the proposed slurry pipeline and concluded: (a) water discharged into freshwater streams or rivers will have no adverse impacts on the beneficial uses of the streams or rivers; (b) water discharge will not affect the aquatic biology because the discharge must meet applicable state water quality standards and National Pollutant Discharge Elimination System permit standards set by EPA; (c) projected levels of metals after treatment of the water would be less

[1] The attachments were not reproducible and are in the committee files.

than all EPA Primary Drinking Water Standards; and (d) water treatment facilities will reduce the levels of total dissolved solids and sulfates to state standards.

The cost of treating water used in a coal pipeline in order to comply with state and Federal water pollution control laws will be borne by the pipeline company, and have been included in the construction costs.

Construction of the ETSI pipeline ultimately will require over 500 state and Federal permits. The majority of these are non-environmental, routine pipeline construction permits now being obtained by ETSI's Right of Way Division in Tulsa, Oklahoma. All construction permits have been obtained for ETSI in the states of Colorado, Kansas and Oklahoma.

Major environmental permits required for the ETSI project include four air quality permits for the coal preparation plants in Wyoming. Three of these have been acquired and application for the fourth is being prepared. Another five air quality permits are required for the dewatering plants. Three of these have been obtained. The dewatering plants also require twelve water discharge permits: six Federal and six state. The six state permits, three from Oklahoma and three from Arkansas, have been obtained. The six Federal permits are still pending, but approval is expected shortly.

In addition to the various environmental permits, a host of Federal compliance actions are required before ETSI can receive a notice to proceed from the U.S. Bureau of Land Management. These include 21 actions to comply with Federal regulations on threatened and endangered species, and 45 actions to comply with Federal regulations on cultural resources surveys. ETSI has received 100 percent clearance for its main pipeline with respect to endangered species requirements. Compliance with the cultural resources survey requirements is about 35 percent complete.

To date, companies have announced plans for the construction of nine interstate coal pipeline systems that are in various stages of development. Seven of the projects would originate in the West. Two projects are proposed in the East. In addition, Governor Rockefeller of West Virginia recently commissioned a feasibility study to identify potential coal pipeline projects that could transport West Virginia coal.

My company, Transco Energy Company, in partnership with Virginia Electric & Power Company, has proposed a pipeline approximately 400 miles in length to transport coal from southwestern Virginia to the Port of Hampton Roads. Based upon an economic feasibility study prepared by Virginia Polytechnic Institute and State University, we are considering a capacity of 15–25 million tons of coal annually. The pipeline would serve not only VEPCO's power plants in Virginia, but also other domestic utility customers on the east coast and, possibly, export customers. A brief description of each of the current proposed coal pipeline systems is included in my testimony as Attachment 2 and Attachment 7.

II. NATIONAL BENEFITS OF INTERSTATE COAL PIPELINES

A. Will provide competition in coal haulage rates and provide jobs

For the foreseeable future, the vast majority of domestic coal shipments will be made by rail. The National Energy Transportation Study (NETS), that was published in July, 1980, states that in 1976, 73 percent of all coal was originated by railroads, 12 percent by water and 15 percent by truck. (NETS, p. 61). The Study projects that the rail share of coal haulage could reach 87 percent to 90 percent in 1990. (See NETS, Figure 3–1, p. 33). A recent study by Data Resources, Inc. states that 468 million tons of coal were moved by rail in the United States in 1980 and, assuming that no interstate coal pipelines are built, rail haulage of coal will increase to 746 million tons in 1990 and 1,156 million tons in 2003. (Attachment 3, Table 4).

What has prompted the railroads to oppose so strenuously coal pipelines is their stated belief that this alternative transport mode will take from them some significant portion of their coal hauling traffic. This argument has been a cornerstone of railroad lobbying with Congress. Rail labor has joined management in the lobbying against Federal eminent domain legislation for coal pipelines. Union leaders contend that thousands of railroad jobs will be lost if coal pipelines are built.

Now, let's try to put this argument into perspective. The railroads have held a virtual monopoly on coal traffic for many years. Eighty-five percent of all the coal moved by railroad in the United States has no practical alternative and the railroads carry 65 percent of our total coal production.

The railroads now contend that coal pipelines will lead to massive railroad employee job losses. The basis for this allegation is the belief coal pipelines will syphon off coal hauling traffic, leaving the railroads in an economic lurch.

The fact, however, is that coal production is expected to rise to a billion and a half tons by the mid-1990's. If all the presently proposed coal pipelines are operating at capacity by 1995, they will carry about 180 million tons of coal each year. This leaves 1.3 billion tons annually to be carried by existing coal transportation.

The railroads aren't expected to be carrying any less than the 65 percent of the market they now enjoy. Thus, any way you look at it, the railroads would be carrying more than 840 million tons of coal each year—more coal than is produced today.

The Joint Economic Committee of Congress recently released a study about coal as an economic catalyst. It found that more than 13,000 rail jobs are created for every million tons of annual coal production carried by rail.

Simple mathematics tells us that the railroads—instead of suffering job losses—can expect a bonanza of 40,000 new jobs by the mid-1990's.

By 1995, coal pipelines would account for—at most—12 percent of all coal shipped in the United States. Railroads could handle at least 60 percent.

I do not believe that the facts support an argument that coal slurry pipelines will displace railroads as America's principal transportation system for coal in the forseeable future—or indeed, at any point. So the impact of coal pipeline competition probably will not be a large volumetric decrease in the coal hauled by railroads. Coal pipelines competition—and, indeed, the very passage of this legislation—should, however, moderate the rates railroads can change for coal haulage.

The Staggers Rail Act of 1980 began to return price regulation to the marketplace by deregulating many railroad activities, including, with some limitations, the haulage of coal. In addition, the Staggers Rail Act assured that railroads have the authority to enter into long-term coal haulage contracts. The full benefits of market regulation of railroad operations and long-term contracts for rail coal haulage will not be realized, however unless the railroads are faced with viable competition from other modes of transportation. Coal pipelines can provide that competition.

The need for competition has been substantially increased by a recent ICC rulemaking (Ex parte 347 (Sub No. 1)) implementing the Staggers Rail Act. In Ex Parte 347, coal freight guidelines were issued which include a proposal to permit railroads to raise the cost of coal transportation 15 percent per year above the rate of inflation in addition to other increases already prescribed in the statute. The tables at the end of my testimony illustrate what the 15 percent rule could do to delivered coal costs at five randomly selected utility sites in the country (Oregon, Texas, Arkansas, Maryland and Pennsylvania). (Table I)

Mr. Chairman, arithmetically, a 15 percent increase will double the cost of railroad transportation in 5 years, triple the cost in 8 years, and quadruple the cost in a 10-year period. For Houston Lighting and Power, the 15 percent increase alone in 1997 will amount to more than what it now costs to move the coal from Wyoming. The 1997 increase is projected to be about $30.01 per ton as opposed to a current transportation price from Wyoming to Houston of $28.28.

To date, coal pipelines have proven to be cost effective and reliable modes of transporting domestic coal in two basically interstate systems in Ohio and Arizona. An intrastate coal pipeline that was operated for several years in Ohio by Consolidation Coal Company was mothballed in 1963 after six years of operation when the competing railroad dropped its coal haulage rate from $3.47/ton to $1.88/ton. Latest figures indicate that the Black Mesa Pipeline in Arizona, which is operated by an affiliate of the Southern Pacific Railroad, is delivering coal efficiently and reliably at an extremely competitive rate. I am told that the Black Mesa Pipeline was built because that cost of building a railroad line across the rugged terrain in that part of Arizona was prohibitive.

The economics of the proposed pipelines appear to be equally attractive. A study of the Coalstream project by A. T. Kearney, Inc. (May, 1981) concluded that transporting 54 million tons per year of coal by pipeline rather than rail would result in an aggregate transportation savings of $12 billion in 1980 dollars for the twenty-year period beginning in 1988. (See Attachment 4). The feasibility study for the Trans-Virginia Pipeline as prepared by VPI, indicated that coal could be transported 400 miles from southwest Virginia to the Port of Hampton Roads for approximately $7.56–$8.22 per ton at the 25 million ton per year capacity level. By comparison, VEPCO is paying an average of $19.00 per ton for railroad freight to its power plants. VEPCO anticipates that it would reduce railroad rates by $66 million per year if a coal pipeline was constructed. In short, the economics of coal pipelines are compelling and offer an opportunity for significant railroad coal haulage railroad rates to be reduced. Such dramatic results are achieved by coal pipelines because most of the costs of a coal pipeline system are capital costs, which are insulated from the effect of inflation after construction is completed.

The Preliminary Report of the National Energy Transportation Study has reached a conclusion that is consistent with our nation's experiences with both the Ohio pipeline and the Black Mesa line and with the results of the Kearney study:

"Under appropriate conditions, coal slurry pipelines can be the economical and environmentally preferable means of transporting coal.

"Also, in light of pending deregulation of the railroad industry, coal slurry pipelines would tend to keep rail rates at a more competitive level." (NETS, p. 76)

B. Will provide additional capacity for coal haulage

The National Energy Transportation Study (July, 1980) projects that total coal haulage by all modes of transportation will triple between 1985 and 1990, reaching a total of 1,184 to 1,345 million tons (p. 33). Increases of this magnitude will create a substantial strain on our railroads, waterways and highways that coal pipelines can help to alleviate. According to the NETS Study—

"Coal slurry pipelines have been resisted by the railroads because of fears that pipelines would reduce rail coal shipments and profits. However, the future demand for coal in areas currently being served by railroads in expected to be sufficiently large to require additional coal distribution capacity. Coal slurry is an efficient way of providing some of this additional capacity. Recent analyses conducted for DOE indicate that with or without coal slurry pipelines, railroad transport of coal will increase dramatically. The addition of coal slurry pipelines provides another option to insure that the overall distribution system expands efficiently to meet national coal production goals.

"If all the slurry pipelines currently under consideration are built and operated at full capacity, they will be able to carry 176 million tons by 1990. This amounts to 19 percent of the increase in inter-BEA coal traffic. However, a recent study conducted for the Department of Energy concluded that slurry pipelines are most likely to be carrying between 70 and 126 million tons of coal in 1990. This amounts to between 5 and 9 percent of the total coal to be transported in 1990." (NETS, p. 776, et. seq.)

C. Will assist U.S. steam coal to compete in the world coal market

1. *The European and Pacific rim markets.*—U.S. steam coal must compete against foreign coal in at least three distinct markets: the European market, the Pacific Rim Market and the U.S. market. The projected foreign market for U.S. steam coal is huge. (See Attachment 6). For example:

Belgium-Luxembourg, Denmark, France, Italy, The Netherlands and West Germany used 46.1 million tons of steam coal in 1979, but are projected to use 124.2 million tons in the year 1990—an increase of almost 300 percent in 10 years.

Japan, Korea and Taiwan used 13.9 million tons of steam coal in 1979, but are projected to use 67.8 million tons of coal in 1990—an increase of almost 55 percent in the same 10-year period.

Foreign coal buyers are interested in purchasing our steam coal due to the general stability of the United States government, but our coal must also be competitive in price. The testimony by coal importers from Europe and the Pacific Rim nations at Senator Warner's excellent hearings in December, 1981, was to the same effect. The Europeans have expressed concerns about railroad dominance in the U.S. and the impact of the Staggers Rail Act on the cost of U.S. coal.

This concern was also demonstrated at last year's United States-Japan Coal Conference in Kyoto, Japan, where NCA President Carl E. Bagge noted Japan's particular concern about railroad coal transportation rates. He pointed out that Nippon Steel Corporation executive Kats Tanaka has told U.S. coal producers that if railroad companies continue to raise their rates, as they have in the past, the increases in American coal prices would eventually reach a level that the Japanese could no longer absorb. Mr. Tanaka believes a more competitive coal transportation system is essential to help keep the United States on its present course of narrowing the cost gap between American coal and other world coal.

On September 19, 1980, Dr. Carroll L. Wilson, Director of the World Coal Study, testified before the Senate Energy and Natural Resources Committee in a hearing on coal exports. In reporting on the concerns about the U.S. that are expressed by steam coal importers in Europe and the Far East, Dr. Wilson reviewed some of the fears that had been expressed to him, stating:

"They also see a rail domination which would exclude supply by alternative systems such as slurry pipelines." (p. 262 of the transcript)

In the past, the security of the United States as a source of coal has offset successfully our price disadvantages of 15 to 40 cents per million Btu's in the European market and 30 to 60 cents per million Btu's in the Pacific Rim market. But we

cannot rely on this "security" premium alone in the future. Competition from interstate coal pipelines can operate to moderate the transportation costs of our steam coal and assist the United States to compete in foreign coal markets.

As a matter of fact, the recent special U.S. coal trade mission to Europe led by former Assistant Commerce Secretary William Morris, confirmed the fears of the European coal markets. The questions most often raised by the potential coal importers were the reliability of the U.S. as an exporter as well as the high cost of U.S. coal transportation since the passage of the Staggers Act. The noncompetitive nature of Eastern rail rates was pointed out as a deterrent to using U.S. coal as recently as last week at the International Energy Agency meeting in Paris. China has two pipelines under feasibility study, both of which are scheduled to be under construction by mid 1984, and six other pipelines are under consideration by the Coal Ministry. The Russians have announced plans for one 1,200-mile pipeline and one shorter line. Both the Chinese and Russians would utilize American developed technology for the development of their initial coal pipeline systems.

2. *The U.S. market.*—We must not overlook the fact that U.S. coal must also compete for the growing U.S. steam coal market as well. The focus of that competition is not the minemouth price of coal, but rather the delivered price of coal, which includes the cost of transporting coal to its point of use.

Let's examine the delivery of coal to the markets of Georgia and Florida through the Coalstream Pipeline. In 1980, 31 million tons of coal were used in the two states, with 9 million of the 31 million tons being used in Florida. Included in the figure are almost one million tons imported from foreign sources: 750,000 tons of steam coal were imported from South Africa by Gulf Power Company and 240,000 tons of coal were imported from Poland by Tampa Electric Company. All of the imported coal was used in Florida.

By 1990, the steam coal market of Georgia and Florida is projected to more than double to 84 million tons. U.S. steam coal will be forced to compete for this expanded market with not only Poland and South Africa but the developing coal production capacity of South America. For example, Exxon is developing one of the world's largest surface mines at Cerrejon, Colombia, which reportedly will be in production by the mid to late 1980's. Utilities in Florida and Georgia, as in most states, are under an affirmative obligation to purchase the least expensive coal available to them. Thus, our eastern coal may simply lose much of the growing Florida and Georgia market to foreign coal unless the delivered costs of U.S. coal can compete with the delivered price of imported coal.

D. Will be an environmentally superior mode of transportation

Pipelines offer significant environmental advantages over other modes of transportation. Coal pipelines are noiseless, safe and underground. Coal pipelines do not interfere with other surface activities; do not emit dust or create noise problems: and are not affected by the hazards of weather. The noise levels of trains can be objectionable in cities and towns, especially in small towns where the rights-of-way often pass through residential neighborhoods. In addition to noise pollution, rail traffic contributes "nuisance" pollution at grade crossings through the interruption of automotive traffic and the disruption of normal activity in small towns, especially where the rail line passes through the center of the town..

III. NEED FOR FEDERAL EMINENT DOMAIN LEGISLATION

Interstate coal pipelines will be built without Federal financial assistance. Interstate coal pipelines cannot, however, be built in most instances unless Federal legislation is enacted extending the Federal right of eminent domain to interstate coal pipelines. Proof of this reality exists in the fact that no major interstate coal pipelines have been developed in this nation during the 21 years since Federal eminent domain legislation was first submitted to Congress in 1962.

Faced with active railroad opposition, state legislatures cannot deal effectively with the issue of eminent domain for coal pipelines in their usual abbreviated sessions, particularly when the fundamental issues of providing essential state services are today so difficult and time consuming. These practical problems are particularly true in those states through which pipelines must be built, but in which coal is neither picked up nor delivered. In fact, such states may encounter legal difficulties in identifying benefits to their citizens that would support the grant of state eminent domain authority to such coal pipelines. Similar experiences led to the amendment of the Natural Gas Act in 1947 to grant the Federal power of eminent domain to interstate gas pipelines. (See Attachment 6.)

Attempts to build interstate coal pipelines without Federal eminent domain authority and to encourage the enactment of appropriate state eminent domain statutes have not been notably successful. The experiences of the Trans-Virginia Pipeline are most instructive in the regard

In 1963, The Virginia Legislature enacted legislation prohibiting the use of eminent domain for coal pipelines (immediately after West Viriginia enacted its statute extending eminent domain authority to coal pipelines). In a major legislative effort, a bill that would have provided eminent domain authority and a bill that would have repealed the existing prohibition in Virginia law were defeated this session of the legislature. Other efforts in the past have also been unsuccessful in Virginia primarily due to the fact that the headquarters of two of the largest rail systems in America are in that state. The political power of the rails in Virginia has resulted in the codification of a statute that prevents the free market from operating—railroads, the natural competitors of pipelines, can prevent the competition by refusing rights-of-way to coal pipelines. Ironically, those are rail systems that have been beneficiaries of state and federal aid and the state right of eminent domain. In a state in which the coal industry, consumers and the port would benefit from a coal pipeline, the political system has allowed the rails to block its development.

The experiences of the ETSI Pipeline Project also paint a clear picture of the difficulties involved in building an interstate coal pipeline without Federal eminent domain authority. ETSI's right-of-way acquisition for its 1386 mile main coal pipeline began in 1975. ETSI found that the greatest difficulty encountered was in securing permission to cross under the various east-west railroad routes which had to be crossed in the southeasterly pipeline routing. ETSI officials initiated contacts with the various railroads involved in an attempt to negotiate easements or licenses to cross under the track beds located across the proposed route. The ETSI representatives were refused crossing permits in every instance. Ironically, the railroads involved had obtained their right-of-way interests through Federal grants and, sometimes, through the exercise of Federal eminent domain authority.

Also, at about this time, ETSI was informed by federal officials that action would not be undertaken for preparation of an environmental impact statement until ETSI had demonstrated that railway crossings could be secured. This meant that the long schedules normally occasioned by the National Environmental Protection Act process of demonstrating the environmentally sound manner in which the system would be built and operated would be compounded by protracted efforts to secure crossing approvals. I might add that in ETSI's final EIS issued by the Bureau of Land Management, ETSI's coal slurry pipeline was found to be an environmentally sound way to transport coal.

Faced with railroad refusals to negotiate, ETSI undertook what was termed the "window program" for obtaining rights-of-way from the railroads. Extensive title searches were made of the railroad land grants that lay across the proposed route. Records indicated that all the railroads ETSI crossed were built under the Federal Railroad Acts of 1862 and 1864. ETSI's land division identified crossing points at or near the proposed pipeline route where the land in question was held as an easement under the Railroad Land Grant Acts rather than in fee ownership. ETSI then began an extensive process of legally challenging the authority of the railroads to deny crossing requests. It became necessary to institute 65 individual law suits against the railroads to establish ETSI's rights. ETSI's Window Program was completely successful at the trial court level as well as in appellate review by both the Eighth and Tenth Federal Circuit Courts of Appeal and the Oklahoma Supreme Court. See, *Energy Transportation Systems, Inc.* v. *Union Pacific Railroad Co.*, 606 F.2d 934 (10th Cir. 1979), *Energy Transportation Systems, Inc.* v. *Kansas City Southern Railroad*, 638 F.2d 459 (Okla. 1981).

Although this costly and time consuming litigation enabled ETSI to obtain rights-of-way to cross under the rail lines, it had to realign the pipeline so that it would cross at the windows opened by the courts.

This legal process added at least an additional two years to the preconstruction stage at a time of high inflation as well as substantial direct legal fees. An additional $500 million to projected construction costs was added because of the inability of ETSI to obtain necessary rights-of-way in Nebraska and thereby requiring ETSI to go an additional 35 miles through Colorado. Fortunately, ETSI was successful in this protracted litigation and a precedent has now been set which could allow the development of some western interstate coal pipelines that are capable of aligning their rights-of-way to fit the railroad ownership interests that were granted by Congress under the Railroad Acts of 1862 and 1864. Unfortunately, for coal pipelines in other areas of this nation, the "Window Program" approach is not feasible where the railroads own the underlying land in fee.

As I indicated previously, similar difficulties led to the amendment of the Natural Gas Act in 1947 to grant Federal eminent domain authority to interstate natural gas pipelines; the enactment of the Cole Act in 1941 to grant Federal eminent domain authority to several interstate petroleum pipelines from the Gulf Coast to the Washington area; the grant of Federal eminent domain authority to the land railroads (Santa Fe, Union Pacific and Burlington Northern) in the 1860's; the grant of Federal eminent domain authority to interstate bridge companies and to certain interstate electric transmission projects. Because the railroads refuse to admit that any railroad had Federal eminent domain authority, I would like to attach copies of some of the statutes that granted such authority to the railroads. (See Attachment 8.)

The enactment of Federal eminent domain legislation in each of these instances allowed the development of these interstate energy and transportation facilities that have provided enormous benefits to our nation and literally have changed the face of our country. The adoption of this Federal eminent domain legislation will give coal pipelines a chance to earn a place in our nation's cost transportation system.

IV. LEGISLATION MUST PROVIDE FOR THE REGULATION OF PIPELINES

Under existing law, coal pipelines are regulated by the ICC. However, there are no instructions in existing law providing ICC with specific guidance as to how coal pipelines should be regulated. In order to finance coal pipelines, coal pipelines need the same right to sign coal transportation contracts as the Staggers Rail Act of 1980 gave to the railroads.

There should be a clear mechanism by which these contracts are filed and approved by the ICC. The regulatory mechanism needs to provide a process for approving contracts and protect shippers from pro-rationing.

V. SUPPORT FOR S. 267

The Slurry Transport Association and my company strongly support the adoption of S. 267, the Coal Distribution and Utilization Act of 1983. We also support the enactment of H.R. 1010 in the House of Representatives.

In addition to the alleged impacts on railroad labor, the most controversial aspect of interstate coal pipelines is the fact that most coal pipelines that are being considered today will use water as the medium of transportation. The allocation and use of water is an issue of great importance in every region of our nation. The issue is of particular importance, obviously, in those regions of our nation where water is relatively scarce, such as certain areas of the West and Southwest.

As proponents of coal pipelines, we strongly support Section 5 of S. 267, as reported by the Senate Energy and Natural Resources Committee, (and the comparable provisions of H.R. 1010) which provides that decisions concerning the allocation and use of water shall be made exclusively by the states in accordance with state substantive and procedural law. This language was crafted carefully by water law experts who testified at Senate Energy Committee hearings and reflects their suggestions. Stated succinctly, we believe that the states will have the right to make the water decisions regarding coal pipelines.

Those states possessing coal reserves are faced with a fundamental decision: whether or not to develop those reserves. If the decision is in favor of development, and I know of no state that has determined not to develop coal, then the state must determine what to do with the coal that is mined. At that point, the state has at least four alternatives available to it.

First, the state can export the coal via train. Trains are not water intensive, but trains do create additional problems of congestion and safety—and their rail and haulage rates are increasingly high. Second, the state can suppport the development of facilities to liquefy or gasify the coal in the state and then export the liquid or gaseous product by train or pipeline. However, liquefying coal requires the same amount of water as does a coal pipeline and gasifying coal requires twice as much water as a coal pipeline. (See Attachment 9). In addition, these large synfuel facilities may create other significant socio-economic impacts. Third, the state could support the development of mine-mouth electric generating facilities. But such facilities require up to five times as much water as do coal pipelines. (See Attachment 9). Mine-mouth electric generating facilities also create substantial socio-economic impacts and necessitate the construction of over-head electric transmission lines that some people find to be both obtrusive and inconvenient. Finally, the state could opt to suppport the development of coal pipelines that are constructed underground and are less water intensive than several of the alternatives.

VI. CONCLUSION

Mr. Chairman, the case for interstate coal pipelines is compelling. We believe interstate coal pipelines can provide significant energy and economic benefits for the nation. But these interstate systems simply will not be tested in the marketplace unless workable Federal eminent domain legislation, such as S. 267, is enacted. We encourage the enactment of this legislation expeditiously in order that these projects may begin to be developed.

Thank you, Mr. Chairman.

[The following information was subsequently received for the record:]

TRANSCO COAL CO.,
Richmond, Va., May 23, 1983.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DANFORTH: It was a pleasure to appear before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science and Transportation on May 5, 1983. Thank you for allowing me the opportunity to comment on issues relating to the Coal Distribution and Utilization Act of 1983, S. 267.

During the hearing, you asked several comprehensive questions that related to coal pipeline transportation contracts and coal pipeline ownership by electric utilities. Your questions relate to important implications of coal pipeline legislation. The following comments which elaborate on these matters may be helpful to you in your review of the proposed legislation.

COAL PIPELINE TRANSPORTATION CONTRACTS

Coal pipeline transporation contracts are not analogous to "take-or-pay" contracts that have become common in the natural gas pipeline industry. Natural gas pipelines normally buy gas from gas producers, transport the gas through their pipeline system and then resell the gas to distribution companies and industrial users. In recent years, many natural gas pipeline companies have entered into "take-or-pay" contracts with gas producers for the purchase of large quantities of gas for their pipeline system. Apparently, some of these "take-or-pay" contracts have been for large volumes of gas at rather high prices.

Coal pipelines will not purchase the coal that is transported through the coal pipeline system. Rather, coal will be purchased at the minemouth by the ultimate consumer of the coal, which usually will be a utility or a major fuel burning installation. The coal pipeline company will enter into a contract with the utility or the major fuel burning installation for the transporation of the coal from the mine site to termination point of the pipeline. Therefore, the contract entered into by coal pipeline companies will not be a contract for the purchase of a commodity, but rather will be a transportation contract that is consummated with the owner of the coal and will be very similar to the contracts that railroads are consummating with utilities for coal transportation.

Coal pipeline companies anticipate coal pipeline contracts that will specify the price to be charged for the transportation services, the amount of coal to be transported, the duration of the transportation and other similar elements that would be addressed by prudent business entities in similar contractual situations throughout American business today. These contracts may very well contain "minimum volume requirements" which are also common in the transportation contracts which have been negotiated between the railroads and certain of their customers since such contracts were authorized in the Staggers Rail Act of 1980.

We believe that long-term pipeline transportation contracts will be attractive to both pipeline customers and pipeline operators. Pipeline customers, such as electric utilities, are developing coal-fired electric generating facilities that depend on long-term coal supplies. Normally, the utility develops an electric generating facility for specific types of coal and assures the availability of that coal at economical prices by entering into long-term contracts with coal producers. Coal producers, in turn, often seek long-term sales contracts that will justify the large capital investments that are required to develop a coal property. Because the cost of transporting coal can be as much as fifty percent of the delivered cost of the coal in the East and as much as seventy-five percent of the delivered cost of the coal in the West, coal transportation costs are a significant item to utilities and their customers. Long-term coal transportation contracts can often assure that the per ton throughput cost of coal will be

more economical than would be the cost of spot shipments of coal at published tariff rates. Thus, long-term coal transportation contracts can be extremely important to the shippers of coal.

For coal pipelines, long-term transportation contracts will establish a secure source of revenues to assist in financing the project. By establishing a predetermined volume of throughput, the pipeline tariff structure will be determined. Based upon such fundamental economics, a financing plan will be developed that will include equity as well as debt financing. The capitalization will be influenced by the anticipated profit margin as established under the tariff and the ability to cover the cost of borrowed funds and debt repayment. The capitalization of each project, however, will be unique and will be based upon the specific economics of the project.

As Chairman Taylor testified before your Committee on May 5th, the marketplace will determine the terms of the coal transportation contracts that coal pipelines will be able to consummate with utilities and major fuel burning installations. Coal shippers have an interest in assuring an adequate coal supply and the economic transportation of coal for reasonable periods of time at reasonable prices in order to avoid cyclical supply and demand imbalances over the life of a coal burning facility. On the other hand, utilities generally stagger coal transportation contract terms in order to take advantage of changing economic conditions. The railroads, which are often hauling coal today along the routes that we would like to follow, can be expected to be vigorous competitors in attempting to prevent utilities from entering into long-term coal transportation contracts with pipelines. In short, we agree with Chairman Taylor that the market will determine the terms of our contracts.

Nevertheless, you suggested that there there might be a need to establish a legislative limit on the duration of coal pipeline contracts. During ny testimony, I noted that some pipelines, such as our pipeline project in Virginia, might require shorter terms contracts than would larger projects, such as the major coal pipelines that are proposed from the West to the Southwest and the pipeline that is proposed to move Illinois Basin and Appalachian coal to Florida and Georgia.

After your hearing on May 5th, the Slurry Transport Association canvassed its membership and the consensus was that no minimum contract period should be legislated. The market competition between railroads, pipelines and barges will determine the most favorable duration of coal haulage contracts for coal shippers. However, if a contract limitation is to be legislated, then the minimum contract period should be at least 20 years. A 20-year contract term is shorter than some of the recent contracts for coal transportation that have been consummated by the railroads. In addition, a 20-year contract term will match the life of the contract with the expected engineering life of the pipeline, a reasonable expected life for the coal reserves and the lower end of the expected life of the electric generating facilities. A legislative cap of 20 years will also allow shippers and pipelines to agree on shorter contracts through marketplace competition.

In recent years, due particularly to the changing costs of energy, utilities have negotiated shorter contracts and normally have included renegotiation clauses in coal purchase contracts that allow renegotiation after each five years of the contract. Such renegotiation clauses provide an opportunity for the utility to reassess the quantities, qualities and prices of coal to be supplied under the contracts. Similar renegotiation clauses will likely be an item of negotiation between pipelines and prospective shippers. Obviouly, as stated previously, the transportation of coal is a significant element in the delivered price of coal such that both the sales contract and the transportation contract must contain comparable contractual clauses.

In short, Mr. Chairman, the term of our coal pipeline transportation contracts will be dictated by the marketplace. Coal pipelines will move into competition with establised coal carriers, such as the railroads. We will provide an alternative mode of transportation for coal which, by definition, will place utilities and other coal purchasers in excellent bargaining positions concerning our proposed contracts. We anticipate stiff competition from established coal carriers and hard negotiations with utilities. Nevertheless, we are sufficently confident of our ability to compete that we are willing to invest substantial private capital to enter the coal transportation marketplace.

COAL PIPELINE OWNERSHIP BY ELECTRIC UTILITIES

As stated in my testimony on May 5th, no utility has announced plans to own a 100 percent interest in a coal pipeline. Virginia Electric & Power Company is working with Transco Coal Company to develop the Trans-Virginia coal pipeline. VEPCO plans to own less than a majority interest in this pipeline project. VEPCO's interest in this coal pipeline project will be owned by a wholly-owned subsidiary of the util-

ity holding company. Therefore, the liability of the investment will be limited to the subsidiary and the strockholders of the utility holding company. The subsidiary will have no recourse to the customers of the electric utility. The risk, and consequently the rewards, of the project will be borne by the shareholders of the utility holding company.

The proposed Trans-Virginia pipeline will establish the most competitive transportation rate for its customers while at the same time attempting to maximize the return on its investment. The advantage of the pipeline proposal is that it can offer a cost effective alternative form of transportation and yet generate an acceptable return on investment capital. The State Corporation Commission of Viriginia will oversee the cost to the electric utility of purchasing and transporting coal from the mines to the generating stations. The State Corporation Commission of Virginia will determine whether and to what extent the cost of transporting the coal by pipeline will be included in the electric rates to be charged to customers of the electric utility.

THE ACCESS OF SMALL OPERATORS TO COAL PIPELINES

During the May 5th hearing, you raised concerns regarding the ability of small coal producers to access coal pipelines. The coal pipeline industry supports Section 4(c) of S. 267, as reported by the Senate Energy and Natural Resources Committee. This amendment provides that coal pipelines must offer to make available to small producers up to 10 percent of tht total pipeline capacity of the proposed pipeline system.

We have absolutely no hesitation in endorsing the concept of assuring access to coal pipelines for small producers. The coal industry produced 42 million tons of coal in Virginia in 1982. Our proposed pipeline will have an annual throughput capacity of up to 25 million tons per year. The majority of coal mines in the area where the pipeline will be located produced between 300,000 and 1,000,000 tons per year.

We intend to locate our pipeline and our coal preparation facilities in a central region, based upon the availability of coal production and the demand for a particular quality of coal by a potential customer. Of course, as has been previously discussed, the pipeline will not purchase coal directly, but will transport coal purchased by our customers who will be utilities and major fuel burning installations. Therefore, the additional determinant of whether coal from small producers will move through coal pipelines is whether such coal producers will be selling their coal to our customers. Thus, one of the prime determinants in the selection of coal suppliers for the pipeline will not be the size of the operator, but will be the quality and price of the coal that is offered to and purchased by the utilities and major fuel burning installations. Our pipeline welcomes all customers and will be developed in such a fashion that small operators will be able to move their coal to central locations for preparation and transportation through the pipeline.

Again, Mr. Chairman, it was a pleasure to testify before your Subcommittee. We look forward to the early enactment of S. 267 and the development of our pipeline systems as competitors in the coal transportation marketplace.

Sincerely,

JAMES B. CRAWFORD.

SLURRY TRANSPORT ASSOCIATION,
Washington, D.C., May 23, 1983.

Hon. J. JAMES EXON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EXON: At the May 5th hearing by the Senate Commerce Committee on S. 267, the Coal Distribution and Utilization Act of 1983, you asked witnesses several questions for which complete answers were not supplied. We would like to provide you with additional information on three of the questions and would request that this communication be placed in the record on the hearing.

THE NEED FOR DRAINAGE PONDS ALONG THE ROUTE OF THE ETSI PIPELINE

During the hearing, you asked Mr. Jim Crawford, Vice Chairman of the Slurry Transport Association and President of Transco Coal Company, whether the ETSI pipeline would require the development of drainage ponds at 50—100 mile intervals along the length of the pipe. Mr. Crawford answered that he did not believe so, but

that he was not an expert on the ETSI pipeline system. On April 15, 1983, Congressman Bud Shuster submitted a series of questions to Mr. Paul G. Doran, President, ETSI Pipeline Project. One of the questions submitted by Congressman Shuster and Mr. Doran's April 25th response are as follows:

"*Question 19.* Along the 1,400 miles of your route, how many slurry wells or dumping ponds will be required to accommodate dumping in case you need to clear the lines as a result of a break or loss of power? How large would they be? How would they be constructed and what environmental safeguards would be required?

Answer. No slurry wells or dumping ponds are required, as ETSI will not purge its pipeline in the event of a break or loss of power."

HISTORICAL RAILROAD INTEREST IN DEVELOPING COAL PIPELINES

During the May 5th hearing, you asked Mr. Dempsey of the American Association of Railroads about the historical interest of railroads in developing and operating coal pipeline projects. Several railroads throughout the years have made public statements concerning their interest in coal pipelines. Our information includes the following:

Burlington Northern

Some years ago, the Burlington Northern owned an equity position in the predecessor to the ETSI Pipeline Project referred to as Coal Systems, Inc.

On March 26, 1982, in testimony before Senator Baucus in a hearing of the Senate Judiciary Committee on "Rail Mergers and Formation of the BN Holding Company," Richard M. Bressler, Chairman and Chief Executive Officer of Burlington Northern, Inc. stated the following:

"I think, historically, the BN early on had an equity position in the so-called ETSI coal slurry line. It goes back a number of years." (Tr. 142)

In an ICC proceeding styled *Arkansas Power & Light Company, et al.* v. *Burlington Northern, Inc., et al.* (ICC Docket No. 36719), an attachment to the Verified Statement of Lawrence C. Grundmann, Jr., Vice President—Enginneering, System Fuels, Inc. refers to the fact that Burlington Northern was a participant in a pipeline project known as Coal Systems, Inc. Mr. Grundmann's statement indicates that System Fuels, Inc. was notified on February 28, 1973 that the Burlington Northern was dropping out of the pipeline project for political reasons related to state politics in Montana. (Appendix B, Grundmann Statement)

In December, 1982, Burlington Northern, Inc., through its subsidiary R-H Holdings Corporation, offered to acquire 51 percent of the common stock of The El Paso Company, a major interstate gas transmission company headquartered in El Paso, Texas. On December 30, 1982, Mark White, then the Attorney General of Texas and now the Governor of Texas, filed an antitrust complaint in the United States District Court for the Western District of Texas seeking to enjoin the acquisition on the grounds that the Burlington Northern railroad was the primary transporter of coal from the Powder River Basin to Texas and that The El Paso Company was attempting to develop a competing coal pipeline to transport Powder River Basin coal to Texas. The El Paso Company acceded to the takeover bid by Burlington Northern, Inc. prior to the complaint being heard by the District Court. Therefore, on January 12, 1983, Jim Mattox, the new Attorney General of Texas, and attorneys for the Burlington Northern, Inc. entered into a Stipulation which was signed by the judge and filed in the record of the proceeding. Pursuant to the Stipulation, the parties agreed to dismiss the suit without prejudice and Burlington Northern, Inc. agreed "not to exercise control over The El Paso Company (El Paso) so as to impede any existing plans El Paso may have had to develop a coal slurry pipeline serving Texas purchasers of bituminous or subbituminous coal or to interfere in any way with the management or operation of any such planned El Paso pipeline." (Civil Action No. E.P. 83-C.A. 2) A copy of the Stipulation and Complaint is attached.[1]

Southern Pacific

The Southern Pacific Pipeline Company is a subsidiary of Southern Pacific Industries. The Southern Pacific Railroad Company is also a subsidiary of Southern Pacific Industries. The Southern Pacific Pipeline Company owns and operates the Black Mesa Pipeline which transports Arizona coal to a Nevada electric generating facility. The Black Mesa Pipeline is the only coal slurry pipeline currently in operation in the United States. Recently, the Chairman of Southern Pacific Industries stated

[1] The copy is in the committee files.

that Southern Pacific would be interested in additional investments in coal pipelines.

Denver & Rio Grande Railroad

In 1975, the Denver and Rio Grande Railroad entered a joint venture with Houston Natural Gas Company to develop a coal slurry pipeline from Southern Colorado to serve utilities in Texas. The project, known as the San Marcos Project, remains active, but has not yet been able to obtain the water resources required for the pipeline.

THE REASON THE BLACK MESA PIPELINE PROJECT WAS ABLE TO BE DEVELOPED WITHOUT FEDERAL EMINENT DOMAIN AUTHORITY

At the May 5th hearing, you asked why the Black Mesa Pipeline did not require federal eminent domain authority. It is true that the Black Mesa Pipeline was constructed without the federal power of eminent domain. The Black Mesa Pipeline is 273 miles long, 272 of which are within the state of Arizona. Approximately 85 percent of the lands crossed by the Black Mesa Pipeline are either federal lands for which authority presently exists for granting coal pipeline rights-of-way or lands held in trust for the Navajo Indians. Permission for easements were granted by the appropriate authorities in both of these cases. Therefore, only 15 percent of the needed rights-of-way were across privately owned lands or state owned lands. The Black Mesa Pipeline crosses primarily uninhabited desert land and the privately owned parcels are large, such that there were a minimum number of private landowners involved.

The Black Mesa Pipeline crosses the Santa Fe Railroad rights-of-way at one point. The railroad initially refused to negotiate a crossing for the pipeline. However, because a mining permit of a subsidiary or affiliate of the railroad was pending with the Department of the Interior, which strongly favored the project, the railroad finally agreed to grant a pipeline right-of-way. Even when the railroad agreed to negotiate a right-of-way, it demanded a percentage of the profits of the pipeline. At present, therefore, an annual payment is made to the Santa Fe Railroad for the right of passage. Additionally, I might point out that the initial request for a right-of-way was denied by the railroad even though the railroad would not have been carrying either any competing traffic or the coal that was scheduled to be moved by the pipeline.

The Black Mesa situation was unique. To my knowledge, none of the presently proposed interstate coal pipeline projects have found themselves in such a favorable factual situation regarding the acquisition of rights-of-way.

Sincerely,

GEORGE EATMAN, *Executive Director.*

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO.

Question 1.—Questions continue to be asked about the ETSI pipeline. For the record, would you provide the Committee with a status report on this pipeline? If possible, indicate the progress of the right-of-way acquisition program and whether or not there is a need for Federal eminent domain; the possible financing options; the current cost estimate for construction of the pipeline; and the perceived market and whether the focus is on new markets or existing markets, or a combination of both?

Answer. 1—The ETSI Pipeline Project has made significant progress in its efforts to obtain rights-of-way. During the mid 1970's, ETSI undertook 69 lawsuits against the western land grant railroads to obtain rights-of-way under their tracks. Because the land grant railroads own surface rights only ETSI was able to win each of the lawsuits at a cost of $2.5 million in legal fees and several years in delays. Since ETSI's general right-of-way acquisition program commenced in 1981, 2,867 properties have been acquired. Nevertheless, ETSI has not yet been able to obtain all of its required rights-of-way and may be unable to acquire the remainder of its rights-of-way without Federal eminent domain authority. ETSI believes firmly that the very enactment of this legislation will assist ETSI to obtain its rights-of-way whether or not ETSI is ever required actually to exercise the authority granted in the statute.

ETSI will be financed in a traditional fashion. The ETSI partners will provide up to 25 percent of the cost of constructing the pipeline and the remaining portion of the cost of the pipeline will be borrowed in the financial market. The present cost estimate of the ETSI Pipeline is $3.8 billion. From the time of its inception in 1973, ETSI has attempted to develop a pipeline project that will bring coal from the Power River Basin to the emerging coal markets in Oklahoma, Arkansas, Texas and Louisiana. When the ETSI project began, these were all new coal markets. After

experiencing years of delay at the hands of the railroads, some of these markets have become existing markets. Thus, today ETSI could serve a combination of both those utility markets that have come on line since 1972 and those utility markets that are planned for the late 1980's and early 1990's.

Question 2.—Concern has been raised about the take-or-pay contracts that would be required in order to build coal slurry pipelines. What types of provisions would be included in such contracts—would minimum tonnage be required; what would their duration be; and could these contracts be renegotiated during their duration? How would these provisions compare with those included in rail contracts for the movement of coal?

Answer. 2.—There seems to be a misunderstanding concerning the nature of the contracts that will exist between a coal pipeline and the coal pipeline's customers. As you know, "take-or-pay" contracts have become common in the natural gas industry. In the gas industry, the gas pipeline actually purchases the gas, transports it and sells it to a distributor. With a coal pipeline, this would not be the case. Coal pipelines will only transport coal, but will not own the coal. Rather the coal to be transported will be purchased at the mine by a utility or other major fuel burning installation, which will enter into a contract with the coal pipeline for transporting the coal from the mine mouth to the point of use.

Coal pipelines will be entering a competitive marketplace dominated by established railroads. Therefore, market competition will determine the provisions of the transportation contracts between coal pipelines and the owners of the coal.

Coal pipelines will be financed by both equity contributions and debt. In order to obtain the most favorable financing, coal pipelines will attempt to negotiate contracts that provide for the transportation of specified quantities of coal at specified prices for periods of time that may be from five to twenty years in length. Coal pipeline customers, on the other hand, will attempt to obtain prices certainty while retaining their flexibility to reassess their contracts from time to time. The contracts that coal pipelines will be able to negotiate will vary from pipeline to pipeline. In an optimum situation, however, coal pipelines will be able to negotiate contracts pursuant to which certain minimum volumes will be transported at specified prices for periods of time that are long enough to assure the financial integrity of the pipeline. These contracts will be very similar to the contracts that are being negotiated between railroads and certain of their customers since such contracts were authorized in the Staggers Rail Act of 1980.

Question 3.—There is some confusion with respect to the degree to which take-or-pay contracts in the coal slurry industry would be regulated. To what extent would the terms of such contracts be regulated, and by what entity? How would a coal source be protected from becoming captive to a pipeline, with a resulting detrimental effect on the ultimate consumer?

Answer 3.—Coal pipeline transportation contracts will first be regulated by the marketplace. As a new industry entering the coal transportation marketplace, coal pipelines anticipate stiff competition from established coal carriers, including particularly the railroads. At the Federal level, coal pipelines would anticipate filing their contracts with the Interstate Commerce Commission (ICC) and would anticipate that the ICC would make the contracts public. Coal pipelines would further anticipate that the ICC would further anticipate the ICC would have the authority to prevent pipelines from discriminating among their various shippers. Coal pipeline transportation contracts may also be subject to regulatory review at the state level in accordance with state law. In the case of coal pipeline deliveries to utilities (which probably will be the main customers for such pipelines) state utility commissions will normally determine whether and to what extent the coal pipeline transportation costs can be included in the rate base of the utility.

It is difficult to see how a coal source could become captive to a pipeline since railroad transportation of coal is already available in most coal producing areas. Coal pipelines will merely provide an alternative and additional means of transportation for the utilities and other shippers of coal. Coal purchasers can be expected to be attentive to retaining the leverage necessary to force railroads and pipelines to compete for their coal haulage business.

Question 4.—The rail industry is concerned that pipelines would not be subject to the same types of carrier responsibilities as it is. Specifically, while the Staggers Rail Act provided for the industry to enter into contracts, it maintained a common carrier responsibility. Should not coal slurry pipelines be made subject to some type of common carrier obligation?

Answer 4.—Coal pipelines should be subject to a form of common carrier obligation that accommodates to the unique characteristics of a pipeline. We would anticipate that during the development stage of a coal pipeline and at any time that capacity becomes available on a pipeline, the coal pipeline will provide public notice of

the availability of capacity and will accept shippers on a nondiscriminatory basis providing similar terms and conditions to each shipper. Unlike railroads, however, coal pipelines cannot add capacity (*i.e.* railway cars) to accommodate new shippers. Therefore, the common carrier obligation applicable to coal pipelines should provide the essential elements of nondiscriminatory treatment and equal access, but should accommodate to the unique characteristics of a pipeline.

Question 5.—Coal slurry proponents argue that coal pipelines would only take a percentage of the increase in coal traffic away from the railroads, citing the 1978 Office of Technology Assessment study to support this contention. However, it appears that certain of the proposed pipelines, and particularly the VEPCO pipeline planned for Virginia, could divert a significant portion of the existing coal traffic away from the railroads. In light of this apparent discrepancy, would you provide the Committee, with more specifies concerning the impact of proposed pipelines, including the VEPCO line, on current rail coal markets?

Answer 5.—Coal pipelines are being planned to compete for a percentage of our future increase in coal production, rather than for a percentage of our present production. The railroads have continually stated that coal production will double in this country by the year 2000. Additionally, studies have indicated that rail coal transportation will increase 44 percent by 1995. The Trans-Virginia coal pipeline will require at least five years to construct after Federal legislation is enacted. Therefore, the Trans-Virginia line will begin competing for coal haulage in 1988 at the earliest. We may initially transport coal that is currently being transported by the railroads if our rates are lower and the coal is not under a long-term, coal haulage contract with the railroad.

However, as the demand for coal increases, as utilities convert more of their power plants to coal (which we believe will be encouraged by competition in coal haulage), and as the world economy recovers creating a greater demand for export coal, the railroads and pipelines will compete for a percentage of an expanding coal transportation market.

Question 6.—There is continuing concern about the possibility of a utility owning a coal slurry pipeline, resulting in a situation of vertical integration which could adversely affect the ultimate rates paid by the consumers. How do you respond to this concern? What protections exist to ensure that the consumer would not be adversely affected in this way?

Answer 6.—We do not believe that utility ownership of a coal pipeline would have an adverse impact on utility rates. Utilities are closely regulated by every state. The attached memorandum [1] which was prepared by Charles D. Gray, Assistant General Counsel of the National Association of Regulatory Commissioners, provides specific detailed information concerning the state regulatory protections that will prevent utility ownership of a coal pipeline from having an adverse impact on consumer rates.

Question 7.—Legitimate questions have been raised regarding environmental fallout that could be associated with the operation of coal slurry pipelines. Particular attention has been focused on the treatment and placement of the water once the coal is removed and on the ability to respond to a rupture along the pipeline. How would the current pipeline technology deal with these concerns?

Answer 7.—We are confident that coal pipelines can operate without adverse environmental impacts. Coal pipelines will not be allowed to operate until we have obtained all required permits from Federal, state and local environmental regulatory agencies. For instance, the ETSI Pipeline Project testified before the Senate Energy Committee this year that the pipeline project has been required to obtain 500 Federal, state and local permits.

The water from coal pipelines cannot be deposited in streams unless the appropriate permits have been obtained under the Clean Water Act and other such environmental statutes. Most probably, the water from coal pipelines will be cleaned and used as make-up water in the electric generating facilities that are receiving the coal from the pipeline. Where the water is not needed for the generating facilities and where other uses of the water cannot be found, the water will be cleaned to meet all environmental standards and returned to the nation's waterways.

The technology exists today to ensure that the probability of a spill is minimized. The coal pipeline system will be engineered to include redundant control systems, including a series or network of valves that will enable the pipeline to be shut down at various places along its length. Computer control systems that will be included in the pipeline will be able to identify immediately any problems in the pipeline and to trigger mehanisms that will isolate such trouble spots and alert pipeline operators

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[1] The attachment was not reproducible and is in the committee files.

to the development of a problem. The experience with the Black Mesa Pipeline has indicated that, as with every other system designed by man, human error can occur which could result in some coal being spilled in the atmosphere. The one major spill that has occurred in the Black Mesa Pipeline System has taught engineers how to improve the pipeline systems that will be used in the future and also has shown that the coal that is discharged into the atmosphere causes a minimum of damage that can be cleaned up readily.

Senator DANFORTH. Thank you, gentlemen.

Senator Long.

Senator LONG. Let me ask you, Mr. Crawford, what is your reaction to Mr. Dempsey's statement, that coal slurry pipelines are going to raise the rail cost of transporting agricultural commodities because the railroads would lose some of that business and would have to raise their rate on other commodities?

Mr. CRAWFORD. Senator Long, it is my understanding that railroads do not subsidize the commodities they transport. It is my understanding that each commodity's transportation rate is based upon the cost of its haulage.

More importantly, if an alternative transportation system exists which is more economical, the competition for that aspect of the business ought to be allowed to work. If transportation rates for other commodities resultingly increase, then other alternative transportation may be considered. We need to open the avenues of competition.

Senator LONG. Mr. Dempsey, so far as I know I am not familiar with anybody in the coal slurry business. I do know a lot of people in your business and, frankly, I like them. I do not know anybody in the railroad industry that I do not personally like.

Mr. DEMPSEY. Thank you, sir.

Senator LONG. I will not say they have always been for me, and I have not always agreed with them. But I think they are good people, and when they have got a good case I want to help them.

Now, I drive on these interstate highways and it utterly outrages me to see all those trucks especially big heavy ones, tearing up the interstate highways—more cargo ought to be moving on the rails or by barge, because these very heavy loads are going to tear the interstate highways up.

I think you know that, do you not?

Mr. DEMPSEY. I share your sentiments entirely.

Senator LONG. A man who works for me just got through telling me he came back from taking his son down to Texas. Driving across Arkansas toward Memphis, the right-hand lane was the one used most of the time by the trucks and he said that because the right-hand lane was so rough it was brutal on his car. You know, at 55 miles an hour, you try to stay in the left-hand lane all the time and not in the right-hand lane because the right-hand lane, where the trucks are all the time, is just absolutely torn up.

Now, we ought to find ways to move more off the highways and onto the railroads. And everybody I know of, especially all the railroad people, tell me that your industry could handle it. And frankly, I think these road-railers that are being developed on some rail-

roads—I know you are familiar with that new development—have tremendous potential. They ought to just move a huge amount of traffic that is tearing up the highways onto the railroads.

There is a lot of business over there, and I do not see any reason at all why the railroads should not be able to handle it at a much cheaper price. Frankly, I think they load you down with too much labor from time to time, and I tend to agree with your view of labor on that. It should not take more than about three people to move a train—to move 100 cars with three people.

And if you use these road-railers, you can roll them right on off and hook on a cab to them and take them where they are going to go.

Now, why should this transportation system not work so that whoever can take something to a given location at the most favorable price to the public should be able to do that job, and then the people that cannot compete with that find some other business to handle? Why should it not work that way?

Mr. DEMPSEY. I think in principle that is exactly right, Senator. But let me put it this way. We are in favor of competition, as you know. We worked closely with you and with the chairman with respect to deregulation, and that has brought a large measure of new competition into our industry, both among and between railroads and with other modes of transportation. We are in favor of it.

There are several forms of competition, which you are talking about now. And in terms of technological improvements, you mentioned road-railers. Also I was working with our research and test people a couple of weeks ago and there are real possibilities here for dramatically reducing the cost of transporting heavy commodities like coal.

But now, what happens if for any given pipeline 20 to 30 million tons of coal a year are locked up in take-or-pay contracts for 20 or 30 years? What happens then? Now, we have our technological improvements, they come along. We cannot get that traffic back. Competition is absolutely frozen for 20 or 30 years.

Senator LONG. Now, just a minute on these take-or-pay contracts. I was involved in some of that this last year. I was one of those who resisted changing take-or-pay contracts on natural gas and proposed to give the committees a chance to study the issue.

But right now those take-or-pay contracts are being modified. A lot of it is being done voluntarily, and the chances are that if Congress passes any kind of legislation up here, we are going to modify the take-or-pay contract. You are familiar with the fact that if Congress does not like the way contracts are working out, it is not bound, as the State governments are, to respect the sanctity of the contract.

Mr. DEMPSEY. I know perfectly well of your interest in it and the Congress. And it seems to me that what that indicates is fundamentally, if there are binding contracts and they are held to them, the contracts are contrary to public policy.

Now, it is one thing to modify a contract where the business stays with the two parties that entered into that contract. That is one thing. It is another thing to modify a contract where it means that the business leaves the coal slurry pipelines and goes to the

railroads. I think it would be very difficult to persuade a coal slurry pipeline to make that kind of modification.

I was going to mention the Cadiz pipeline. That went into operation some time in the 1950's. It went out of operation when the railroads introduced the unit train and undercut the price the coal slurry pipeline was able to afford. Now, if there had been a take-or-pay contract there those customers would still be getting that coal through the coal slurry pipeline some 20 or 25 or 30 years later.

What I am saying is, if the Congress were to ban take-or-pay contracts we would find that acceptable so far as the rails are concerned. And I really have not heard the proponents of coal slurry pipelines ever explain why they have to insist upon take-or-pay contracts. After all, General Motors does not when they build a plant. They rely upon what is going to happen in the marketplace. And I do not know anybody else that does.

Senator LONG. Mr. Crawford, why do you insist upon take or pay?

Mr. CRAWFORD. If I may, I would first like to clarify the definition of take-or-pay contracts.

Senator LONG. I think I understand what a take-or-pay contract is. I have signed them on occasion. I have been a party to them on natural gas.

Mr. CRAWFORD. Yes sir, my point is that coal pipeline contracts do not encompass the purchase of fuel; that is, coal. There may be a misconception regarding take-or-pay contracts and coal pipelines. Coal pipelines will not operate like natural gas pipelines. Transmission companies purchase gas and contracts to transport and deliver the gas; to a customer under "take-or-pay" provisions.

Coal pipelines will merely provide a transportation service. Pipeline customers; that is, utilities, will purchase the coal at the originating point in the coalfields, FOB the mine, and deliver it to the pipeline. The pipeline company would then be responsible for transporting the coal through the pipeline.

So we are really talking about a contract to transport a specified amount of coal through the pipeline.

Senator LONG. Who is agreeing to take it? Is the utility taking it, or is the pipeline agreeing to take it?

Mr. CRAWFORD. The utility will own the coal through the entire system, Senator Long, the utility would be responsible for taking the coal at the end of the pipeline and delivering it at the initiating point of the pipeline. Accordingly, the situation is not analogous to a gas pipeline.

We are not proposing take or pay contracts of 20 or 30 years duration. Rather we propose a business agreement between the coal pipeline company and its customers, which establishes a set of economics reliable upon which to construct and finance the pipeline. The length of such contracts will be negotiated by the parties.

The length of coal pipeline contracts will be determined, in part, by how much less expensive it is to transport coal by pipeline versus railroad. The greater the potential savings, the more inclined utilities will be to enter into long-term contracts. However, I do not believe that utilities enter into 20- or 30-year contracts and lose the flexibility of utilizing alternative forms of transportation in the future.

We must remember that utilities have changed coal purchasing procedures over the years. At one time, utilities purchased the majority of their coal requirements on the spot market. In the late 1960's and early 1970's more coal was purchased under long-term contracts, however, it was a new concept.

Since the mid-1970's, as new coal fired powerplants were constructed and oil fired plants converted to coal, the utilities became more concernd about the source of coal and more long-term coal supply contracts were entered into.

Now that coal is again plentiful relative to demand, and spot coal prices are depressed, there is a temptation on the part of the utilities to lessen the reliance on long-term coal contracts.

Utilities are seeking a secure supply of coal. They will contract to buy that coal. They will also back that supply contract up with a secure economical transportation system. That is why the utilities are so in favor of pipelines.

Utilities are generally signing 3- to 5-year transportation contracts with the railroads. CSX signed a 3-year contract with VEPCO. New England Electric has just signed a 5-year contract with Norfolk & Southern.

I doubt that we will be talking about contracts under the pipeline for much longer than that, maybe 10-year contracts. But the terms of the contracts will be determined in the marketplace. Utilities will obviously seek the shortest period in order to maintain their flexibility, whereas pipeline companies will seek greater security in order to arrange the financing.

Pipeline companies will attempt to collateralize the pipeline in order to arrange the financing, and we will seek a secure revenue stream in order to cover debt service. As any prudent businessman, we will attempt to structure a financially sound investment, and the economics of the pipeline will determine the terms of the throughput contracts.

Senator LONG. In natural gas we have a parallel area of which I have some knowledge. Now, when you drill a well and you find natural gas, it might cost a great deal more to lay the pipe to get the gas over to the pipeline than it did to drill the well. It might cost several times as much to get the pipeline to get to where you can sell it to somebody, which is to the nearest big pipeline.

Now, if a pipeline is going to sign that contract to buy it from you, they aren't willing to lay the pipe to take your gas from you unless you sign a long-term contract. Now, mind you, that is not the producer that is seeking that contract. That is the fellow who is buying.

They say, well, it is going to cost a fortune to lay that pipeline, which we can understand. We don't want to pay for it. We wish we could find somebody else to pay for it? But if you sign up now, we want you to sign up for the life of that field. As long as you've got something there to produce, we want you to sign up. It is ours.

Now, mind you, the seller didn't want all that, but in order to sell it all, he is asked to sign a contract, and it could be as low as 3 cents or less, and he would say, well, if I am going to sign up for the life of the field, then if you are going to pay somebody else more than you pay me, then I want a deal here that you are going to have to pay me what you pay the other folks if the price of natu-

ral gas goes up, and some would think that there is something wrong about that.

But as far as this guy is concerned, he did not want to sign the long-term contract to begin with, but now someone signs up to buy your gas, and then you think you've got a good contract, but unless the deal to buy says how much you are going to buy, you do not really have a contract anyway, because you might sign up. It says you are going to buy your gas at a good price. Then he might not take any.

So then you want a contract to say you will take a certain amount. That is where the take or pay thing comes into it, and more often or not a take-or-pay contract does not provide that you pay for it without getting anything, but if you agree to take a certain number of units, you pay for that number and they will deliver the rest of the unused units to you later on. Take it whenever you can take it, but basically, the guy who is selling wants to know that he is going to sell something. He is not just going to sign a contract where the other guy is going to buy at a favored price if the price is not right. He is just not selling anything.

I see you are nodding. That is part of the problem involved in all of this.

What is the point of the contract to sell if the other party is not going to buy anything from you?

Mr. CRAWFORD. It works a little differently in the coal business. The producer of coal is not in the same situation as the producer of gas. When utilities enter into a contract to buy coal, there are alternative markets, and utilities are not locked in to a transportation system. Similarly, coal produces can ship to different customers more readily. I think you are absolutely right, however, in the sense that all such projects are based upon securing a market in order to establish a reasonable return on your investment.

Senator LONG. Now, Mr. Dempsey, we just had our Rural Electric Administration people up here. They are generating their own electricity in some respects in Louisiana. They have a generating plant of their own, and they say that under that Staggers rail bill, what they are paying for coal is killing them. It is just absolutely wrecking their customers.

And I have been trying to get some results based on my amendment to the Staggers Act insuring some recourse for captive shippers, but it looks like that does not mean much. We cannot even get the information needed to prove that these rates are just so outrageous that they are killing the consumers down there.

Now, what relief do you give our consumers under the monopoly you have got now?

Mr. DEMPSEY. I just do not agree with the allegation, Senator. I will tell you what the facts are. You know, this particular utility, obviously, I cannot speak to that one, but here are the facts. Since Staggers, in the 27 months since Staggers, rail rates for coal transportation have gone up less rapidly than they did in the 27 months before Staggers. In fact, in the last 6 months of 1982, coal rates nationwide have actually declined. They have gone down. They have not gone up.

Now, I will give you all the facts that are available. I will supplement the record. They are all there. The Bureau of Labor Statistics

figures, DOT figures, ICC figures. And it just is not the case that since Staggers there has been an explosion in coal rates. It just has not happened. That is all.

Senator LONG. Well, you have got an awful lot of unhappy coal customers in Louisiana. You know, we did not want to buy the stuff to begin with. If we had our way, we would not be buying any. You know, we would prefer to use our own natural gas down there, but they make us pump our gas to somebody else. The coal rates are killing us.

Mr. DEMPSEY. Sure, I understand exactly what their feelings are about that, and that is not parochial at all. That is perfectly reasonable, but of course the problem is that when you start bringing coal in, I do not know where this particular utility gets it, but as you well know, down in the southwest, a lot of that is coming in over 1,000 miles, 1,500 miles from the Powder River Basin, and when you start transporting coal or anything that many miles, it costs a fair amount of money. If we had to take it down to Rio de Janeiro, it would cost a lot more. I mean, that is essentially their problem.

Senator LONG. Thank you very much.

Thank you, Mr. Chairman.

Senator DANFORTH. Mr. Crawford, are coal slurry pipelines common carriers or are they contract carriers?

Mr. CRAWFORD. Chairman Danforth, we would classify them as common carriers.

Senator DANFORTH. Common carriers?

Mr. CRAWFORD. Yes, sir.

Senator DANFORTH. That is to say that the purpose of them would be to serve any and all producers of coal?

Mr. CRAWFORD. That is correct. There are fundamental differences, however, between types of common carriers. The procedure outlined in S. 267 required that a coal pipeline provide a service and a benefit in the national interest. One of those benefits would be to provide an opportunity for companies that were involved in coal transportation to be considered without prejudice.

Obviously, once a pipeline route is determined, you have eliminated a portion of the coal producing area from service. However, that route is first determined by considering where it is going to best serve the markets or benefit the coal industry.

Senator DANFORTH. As far as the the start of the pipeline. is concerned, would that be equally accessible to all coal producers?

Mr. CRAWFORD. It would. The regulations will address the question of public knowledge and competition.

Senator DANFORTH. In the statutes, do you think we should write the statute in such a way as to assure that the pipeline would be equally accessible to all coal producers?

Mr. CRAWFORD. Yes. I think this could be accomplished through the form of public notice.

Senator DANFORTH. Well, let us suppose that it turned out that the pipeline began right at the mine shaft or whatever of a very, very large coal producer, and there were, say, 20 miles away some very small coal producers. Would that be anticompetitive as far as the small producers are concerned?

Mr. CRAWFORD. If I may——

Senator DANFORTH. Should we prohibit that in writing the statutes, that the pipeline is not favorable to, say, in this case, the large producer rather than the small producer?

Mr. CRAWFORD. As you know, Senator Ford in the Energy Committee introduced an amendment to the bill which requires that at least 10 percent of the throughput of the pipeline be available for producers of under 200,000 tons per year.

Senator DANFORTH. But as a practical matter, if they are located 20 miles farther away, is not the presence of the pipeline at the large producer a competitive advantage for the large producer?

Mr. CRAWFORD. I do not think so. The pipeline we are active in will be constructed from southwest Virginia. The Appalachian coal fields consists of literally thousands of coal mines. In the State of Virginia, we produced 42 million tons last year. We are considering a pipeline with a throughput of 25 million tons per year. The majority of the coal mines in that area produce between 300,000 tons and a million tons a year. There are only a few coal mines in central Appalachia that produce over 2 million tons a year.

The way coal lays, the mining economies of scale, and the labor intensity require that the coal mines are relatively small units. It is not like coal mining in the West.

Senator DANFORTH. How about the West, then, just directing your attention to the West? Should we attempt in writing this to make sure that the pipeline does not serve to the disadvantage of the smaller producer?

Mr. CRAWFORD. Well, in the West you do not have many small producers. There are generally very thick coal seams which require capital-intensive coal strip mining. So, in the East there may be more of a need to protect the small coal producer. That is why Senator Ford and Senator Warner are concerned about protecting small coal operators.

I think an understanding of operating conditions are fundamental when disucssing common carrier provisions. A pipeline will be located in a central point to a wide coal-producing area where the network of transportation is particularly favorable both by truck and short railroad haul. An Eastern pipeline would not be located at one coal mine. As I say, there is none of the size that could supply the throughput. Coal would be marshaled at the originating point of the pipeline. Large inventories would assure an even throughput.

Senator DANFORTH. I do not want to stay on this all morning, but I think you would agree that we in the Congress have to assure ourselves that this is not going to be to the competitive disadvantage of the small coal miner.

Mr. CRAWFORD. That is correct.

Senator DANFORTH. Now, with respect to the take or pay contracts, must there be take-or-pay contracts to make coal slurry pipelines worthwhile?

Mr. CRAWFORD. I would say that that it would be a normal business objective to try and secure a long-term market in order to assist in financing and assuirng a return on investment.

Senator DANFORTH. Is it essential to the financing of coal slurry pipelines that they have take or pay contracts?

Mr. CRAWFORD. Yes. But as I answered to Senator Long, we do not propose "take-or-pay" contracts as defined by the gas industry. Furthermore, I would not want to leave anyone with the concept that 20- or 30-year contracts are required.

Senator DANFORTH. I would like to get to the time in a minute, but is it essential that there be take-or-pay? If we were to provide in the statute that there was to be no take-or-pay contract, would there be anything wrong with that?

Mr. CRAWFORD. I think that would weaken the commercial viability of the pipelines.

Senator DANFORTH. Well, as far as the financing of take-or-pay contracts, is it absolutely essential that there be take or pay, or could we write laws in such a way as to prohibit take or pay?

Mr. CRAWFORD. I think to prohibit long-term contracts would be a severe blow to the overall objective of alternative transportation and the financial and competitive viability of pipelines. Yes, sir.

Senator DANFORTH. How about a time duration on the take-or-pay contracts? Could we do that?

Mr. CRAWFORD. I think something shorter than the 20 years would be probably acceptable.

Senator DANFORTH. Three to five years. Would 5 years be all right?

Mr. CRAWFORD. I think 5 years is probably too short. Pipelines are capital intensive. Our pipeline, for example, would cost on the order of $1 billion for a 400-mile pipeline. The ETSI pipeline may cost $4 billion for a 1,600-mile pipeline. So 3 years would not pay off that project.

Senator DANFORTH. Pardon? Three years?

Mr. CRAWFORD. Would not pay off a project of this magnitude.

Senator DANFORTH. How about 5?

Mr. CRAWFORD. I think 5 would be short. I think on the order of 10 to 15 years, but again, I think the business and financial marketplace should determine such terms.

Senator DANFORTH. Well, sir, take-or-pay contracts do not have anything to do with the marketplace. It is a long-term method of transportation. If we were to feel that take-or-pay contracts are not in the public interest, and that they are anticompetitive, and wanted to put a duration on them, the question is, What is the shortest duration that we could put on them and not be contrary to the whole possibility of financing them altogether?

Mr. CRAWFORD. Well, I guess that is a weighing of benefits. You know, the railroads are now entering into contracts for unit train hauls, and in those contracts they have provisions regarding limited volume movements in order to support the contract. If you do not meet the minimums, you pay a penalty.

Senator DANFORTH. Would a 10-year limitation on take-or-pay contracts be fair, do you think, and reasonable?

Mr. CRAWFORD. In all deference, Mr. Chairman, I would rather not comment. I think it would be a limitation which is not necessary.

Senator DANFORTH. That is for us to determine. All I want to know is what kind of a limitation can we put in that would not be destructive from your standpoint.

Mr. CRAWFORD. I think in the range of 10 to 15 years is probably a more acceptable duration, but again I do not feel, that duration is an absolute necessity in protecting the public interest. Maybe what you are——

Senator DANFORTH. If it turns out to be that we want some sort of limitation, what period of years would be satisfactory? Ten years, did I hear you say?

Mr. CRAWFORD. I would rather not be bound by such a statement frankly. As I say, it is a complex issue.

Senator DANFORTH. Would you like to submit something for the record on that?

Mr. CRAWFORD. Thank you, I would be pleased to, and prepare it as a consensus of the Slurry Transport Association.

Senator DANFORTH. I think you cannot have it both ways. If you say 3 to 5 years is more like it, then let us have it 5 years. Now it is 10 to 15.

Mr. CRAWFORD. Each project has its own set of economics. What might be good for our particular project in Virginia might not be good for a pipeline in the West. That was the reason for not trying to be too specific at this point in time.

Senator DANFORTH. Well, if you have any specific ideas, we would appreciate hearing them before the bill goes through.

Mr. CRAWFORD. Yes, sir.

Senator DANFORTH. Now, with respect to the interests of the pipeline versus the interests of the utility, I think you said it is in the interest of the pipeline to have a relatively long period for the take-or-pay contract, and it is in the interest of the utility to have a short period.

Mr. CRAWFORD. Yes, sir.

Senator DANFORTH. Why so? Why the distinction?

Mr. CRAWFORD. The utility would probably like to maintain as much flexibility as possible. Utilities require an assured supply of coal for their generating stations, but at the same time if, as we find today, rail rates increase, or if another form of transportation is less expensive, they would like the flexibility to be able to get out of transportation contracts.

Or if, for example, their electric generating requirements should decline, such as in the Midwest, with a change in economic conditions the generating requirements change. The utilities might not need as much coal for certain generating stations, and they would like to maintain coal purchasing flexibility.

Senator DANFORTH. From the standpoint of the utility, in other words, the shorter the period of the take-or-pay contract, the better the utility is, right? The better off the utility is?

Mr. CRAWFORD. Within reason. As I say, they are generally entering into 10-year, 15-year contracts for their coal requirements.

Senator DANFORTH. It is in their interest to keep the period as short as possible.

Mr. CRAWFORD. Well, they want a secure supply, so they do not want it too short, but at the same time, as conditions change, economic conditions, or their requirements, then they would like the flexibility to be able to renegotiate contracts. In our business coal supply contracts often contain market price adjustment clauses or

gross inequity provisions, which allow the parties to renegotiate contracts periodically.

Senator DANFORTH. Would you support that for a coal slurry pipeline?

Mr. CRAWFORD. I think that would be appropriate, and I imagine that sort of provision will be considered during negotiation.That is correct.

Senator DANFORTH. Are the interests of the pipeline and the interests of the utilities somewhat different? They are, are they not?

Mr. CRAWFORD. Today we are supporting S. 267 together.

Senator DANFORTH. I do not mean in this bill, but I mean generally speaking, as an economic matter, the pipeline and the utility are bargaining with each other. In theory, there is a difference of opinion, and the consumer and the marketplace are served by having a degree of tension. Is that not correct?

Mr. CRAWFORD. It is good to have competition. We are providing a transportation service that is one of the costs of producing electricity. As with any business it is important to control costs, raw materials, transportation or whatever, so there is bargaining, similar to the railroads. Utilities are also bargaining with the railroads for lower rates.

Senator DANFORTH. Now, I think that some of the pipelines are either owned by or partly owned by the utilities. Is that correct?

Mr. CRAWFORD. The only one that I am aware of is our project in which Vepco and Transco are 50-50 partners to build this trans-Virginia pipeline.

Senator DANFORTH. So in the case of your particular arrangement, there is, instead of an adversary relationship between the pipeline and the utility, there is an ownership relationship.

Mr. CRAWFORD. There is, and it is interesting why that has occurred. It is obvious that the utilities, as Senator Long has mentioned, are so concerned about transportation that they have become actively involved in the transportation of coal in order to lessen cost. In fact Vepco believes the economics are so favorable that they are willing to invest in pipelines. They look at pipelines as an alternative investment opportunity. This is very encouraging. In effect, the customer of the pipeline is saying they want to be an investor as well as a customer.

Senator DANFORTH. Is the pipeline regulated by the Public Utility Commission?

Mr. CRAWFORD. The pipeline would be. If it was an intrastate pipeline in Virginia, it would be regulated by the State Corporation Commission.

Senator DANFORTH. And the rates charged by the pipeline would be regulated by that same commission?

Mr. CRAWFORD. We doubt that that would occur. We believe that as the Nation is moving toward deregulation in many areas, the railroads are a good example, that pipelines would be unregulated in terms of rate, but be regulated in terms of common carrier services.

Senator DANFORTH. So that you would have, in essence, a vertical integration in your case between the pipeline and the utility. The pipeline's rates to the utility would not be regulated.

Mr. CRAWFORD. No, it would be regulated by the marketplace. The ownership of the pipeline would be a subsidiary of the utility, and the utility would not own the pipeline 100 percent, and through that joint venture arrangement, there would be an attempt to maximize the profits of the pipeline in order to preserve that investment.

Senator DANFORTH. The rates charged by the pipeline to the utility would be regulated?

Mr. CRAWFORD. No, it would not.

Senator DANFORTH. Would not be regulated?

Mr. CRAWFORD. But the utility's electricity rates would be regulated, and one of the costs of that rate would be transportation. So in effect you have an obligation by the State Corporation Commission to look at transportation costs, which is what they do now.

Senator DANFORTH. But do not those transportation costs get passed on to the consumers?

Mr. CRAWFORD. They are not part of the fuel adjustment clause, no.

Senator DANFORTH. What happens if the pipeline ends up costing more than it was projected to cost at the time that the take-or-pay contract was entered into?

Mr. CRAWFORD. It would be a cost overrun that would be incurred by the partnership. It would not become a cost that would be factored into the rates that Vepco would charge for electricity. It is not a cost of construction. It is not a cost that would be a part of the rate base.

Senator DANFORTH. It would be factored into what?

Mr. CRAWFORD. It would not be factored into the rate base. It would be a cost that would be borne by the stockholders of Transco and Vepco. It would not be borne by the customers.

Senator DANFORTH. Should we provide for that in the statute, do you think, that it not be factored into rates?

Mr. CRAWFORD. I think that would be fine.

Senator DANFORTH. Mr. Dempsey, it is my understanding of the railroads 'position that, first of all, as we move more and more into the use of coal in this country, the railroads are able to provide the capacity to serve the additional use of coal. Is that correct?

Mr. DEMPSEY. That is correct, Mr. Chairman.

Senator DANFORTH. You have no doubt about it?

Mr. DEMPSEY. No doubt about it at all.

Senator DANFORTH. So the pipelines are not absolutely necessary in order to provide additional capacity?

Mr. DEMPSEY. I do not think that argument is being seriously advanced anywhere by anybody. We have had studies by, oh, half a dozen Government departments and contractors for Government agencies, and all have come to the same conclusion, including the OTA study. We transported with our existing facilities in the build-up part of the last strike something in the way of 20 percent more than the average we have been transporting without any additional capacity at all.

Senator DANFORTH. Now, with respect to your concerns about the effect of coal slurry pipelines on your industry and on your shippers, I have a letter from Thomas Till, who is the deputy adminis-

trator of the Federal Railroad Administration with an enclosure which I am going to insert in the record.

[The letter follows:]

DEPARTMENT OF TRANSPORTATION,
FEDERAL RAILROAD ADMINISTRATION,
Washington, D.C., October 22, 1982.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR DANFORTH: Per the Committee's request, enclosed herewith are the responses to two questions posed by Senator Pressler to the Administrator during his testimony on September 16, 1982, before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation regarding coal slurry pipelines.

Sincerely,

THOMAS A. TILL,
Deputy Administrator.

Enclosure.

Question.—If coal slurry pipelines were operating tomorrow under present economic conditions, what would it cost per bushel to ship grain out of South Dakota?

Answer.—Construction of the proposed coal slurry pipelines would have a devastating impact on the revenue base of South Dakota's railroads. The Miles City Line, running 482 miles from Montana across northern South Dakota to Minnesota, provides a case example of that impact on railroads and shippers. Burlington Northern Railroad (BN) leases this line, which was purchased by the State of South Dakota and is being rehabilitated with $30 million of Federal Railroad Administration financing.

The primary justification for a Federal investment in the Miles City Line was a combination of grain and coal traffic. The earnings contribution from coal moving over this line provided the increment necessary for the BN to produce a return on the investment. If no coal moved over the line, estimated annual revenues of $32 million would be lost. To produce an equivalent return on investment:

Rates on grain would have to increase by 40 percent.

Rail rates for grain movements to the Pacific Northwest would have to increase approximately 45 cents per bushel (69 percent of BN's South Dakota grain loadings moved westward in 1981).

Sources: (1) Office of Technology Assessment. "A Technology Assessment of Coal Slurry Pipelines," March 1978, p. 53; (2) Burlington Northern Railroad tariffs; (3) South Dakota Railroad Authority application pursuant to section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976.

Question.—What effect would the loss of $8 billion in railroad revenues have on the Railroad Retirement Fund?

Answer.—Over 25,000 railroad jobs would be lost as a result of an $8 billion reduction in railroad revenue in 1990. This in turn would cause a decrease of approximately $138 million in annual contributions to the Railroad Retirement Fund.

In addition to the loss of income, the fund may be depleted by another $121 million. This figure represents unemployment insurance benefits that would most likely be paid by borrowing from the Railroad Retirement Fund. Historically, the unemployment fund revenues have been insufficient to cover the required unemployment payments.

Therefore, the projected 1990 annual loss to the retirement fund is $259 million. Stated in 1982 dollars, the projected loss is $133 million.

Sources: (1) Office of Technology Assessment. "A Technology Assessment of Coal Slurry Pipelines," March 1978, pp. 77-78; (2) Telephone conferences with staff personnel of the Railroad Retirement Board; (3) Dollar amounts are stated in 1990 dollars except where noted.

Senator DANFORTH. His letter responds to questions put by Senator Pressler you stated in your testimony. Just to give the high points of the memo, "Question: If coal slurry pipelines were operating tomorrow under present economic conditions, what would it cost per bushel to ship grain out of South Dakota?" And the answer is, "Rates on grain would have to increase by 40 percent. Rail rates for grain movements to the Pacific Northwest would have to increase approximately 45 cents per bushel, 69 percent of BN's," that's Burlington Northern's, "South Dakota grain loadings moved westward in 1981."

Then, the other question, "Question: What effect would the loss of $8 billion in railroad revenues have on the railroad retirement fund? Answer: Over 25,000 railroad jobs would be lost as a result of an $8 billion reduction in railroad revenue in 1990. This in turn would cause a decrease of approximately $138 million in the annual contributions to the railroad retirement fund."

Would you like to comment in any way on this letter from Mr. Till?

Mr. DEMPSEY. I think that is a carefully wrought study so far as I am concerned, Mr. Chairman. I agree. I think the one thing I would say in supplement to it, though, is the degree to which we could actually raise rates is a wholly different matter than how much we would have to raise them if we could.

Whether we could raise grain rates in South Dakota 40 percent, I think, is questionable. As I said before, we would raise them as much as we possibly could, but in my judgment there is no way that by raising rates in this competitive economy we could ever recapture the amount of lost revenue.

So it would have the kind of spiral that this Congress is well familiar with, inadequate revenue leading to deferred maintenance, leading to diminished service, leading to loss of business, and that downward spiral that finally brought us the Penn Central collapse.

Senator DANFORTH. To what extent is the railroad industry looking toward the hauling of coal as the source of its revenue and as the source of its economic future?

Mr. DEMPSEY. As you know, coal is our No. 1 commodity right now. Let me back up just a minute and give you an indication of where we have to go.

We are looking at net revenues in the industry—let me put aside the recession, because obviously it is atypical—but in 1980 we had the best year that we have had in 30 years or so, with a net revenue of about 4.5 percent return on our net investment, at a time that the ICC said that to reach adequate revenues, which was the target of the Staggers Act, we would have to get a rate of return of 16.5 percent.

So we are looking at a gap that we have to close in this industry. Now there are all kinds of ways in which we are going to try to do that. We are going to make every effort to increase our productivity, reduce our costs, increase the productivity of both our labor and our capital investments, but one thing that we have got to do, obviously, is to haul more traffic and make more money on the traffic that we are hauling.

And if you look at the studies that have been made, what we are looking at in our industry is about 85 percent of our traffic base

that is highly competitive, primarily with motor carriers but also with barges. So coal is No.1.

We are looking at it and its resurgence and the increased volumes of coal that everyone projects as one of the key ingredients to the rehabilitation of the rail industry.

Senator DANFORTH. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Let me start with you, Mr. Dempsey. Are any of the railroads presently pursuing the possibility of entering into the coal slurry business on their own—the possibility of running the slurry adjacent to their tracks where they already have right-of-way?

Mr. DEMPSEY. With one exception, not that I know of—and I do not know much about this. But the Denver Rio Grande some years ago entered into a study of the possibility of some sort of a coal slurry enterprise. I do not know what the status of that is.

Apart from that, as has been indicated, of course, the Southern Pacific operates the only existing coal slurry pipeline in the United States. That was built because the alternative was to build a rail line and the terrain was not suited for a rail line. But apart from that, no.

Senator EXON. My question related to land along existing tracks.

Mr. DEMPSEY. No, not that I know of. Not to my knowledge.

Senator EXON. There has been considerable discussion of that issue over the years. I do not ask you to make a statement on it now. I would hope that possibly for the record you might check and see what the history of that has been in the past.

I suspect that there has been a little more interest on the part of the railroads in a coal slurry pipeline adjacent to their tracks than your statement would indicate. I might be wrong.

Mr. DEMPSEY. Well, historically that is right, Senator, because the Burlington Northern was active early on, 10 years ago or 15 years ago, exploring the economics of coal slurry pipelines, and I would assume they were certainly thinking of laying it along their tracks to the extent possible.

They concluded the economics were not there and there was no point in going into competition with themselves on the basis of an enterprise that they considered would not be as profitable as the rail business. That is the only part of it that I am aware of, but that part of it is true.

Senator EXON. That is exactly the company I had in mind and I appreciate your clarification. If there is anything else for the record that you would like to supply for historical background on this, I think it would be helpful.

Mr. DEMPSEY. I would be glad to.

Senator EXON. We are not directly concerned with the matter of captive shippers today, Mr. Dempsey, but I basically wish to add the concerns that Senator Long has expressed earlier with regard to the major complaints that we are receiving today from some of those in the electrical generation business with regard to the dramatic increase in rates.

I do not know how much you have gone into that before I got here, but that remains a major concern. I also think it would be helpful to have you give us in written testimony the two sides to that very important question.

Mr. DEMPSEY. I would be very glad to do that.

Senator EXON. Mr. Crawford, as an independent businessman I am sure you believe in the free enterprise system. Does it bother you somewhat that you and your industry are requesting the Federal Government to further intrude into the whole matter of the free enterprise system by essentially considering the possibility of giving eminent domain rights at the Federal level?

Mr. CRAWFORD. Senator, I would say that under normal circumstances we as businessmen do not believe that Federal eminent domain is necessary. But in this particular situation, where our competition is in a position to thwart our efforts, there is a need because of the benefits to the Nation.

This is an exception. However, I think that there are grounds for such an exception because all other forms of transportation have had this right. This right is not being given for the first time. It was given to the railroads. It has been granted for electricity transmission highways, gas pipelines, oil pipelines, and all forms of energy transportation.

We have used the right of Federal eminent domain to accomplish our national goals. I believe this purpose is in keeping with a precedent required in out capitalistic system. Free enterprise is certainly a basic tenant of our system, but sometimes a strong central government is required to promote free enterprise.

Senator EXON. Are you saying, then, in your opinion—this is not a trap question, it is just a question—are you saying that the situation today with regard to the establishment of coal slurry pipelines is essentially the same as when this country was opened up to the railroads, when the Federal Government policy was to get this country moving by rail by building the ribbons of steel across the United States. Likewise, is it about the same as those early days of the gas industry when pipelines obviously were necessary, if we were going to rely on natural gas, from the producing States to the nonproducing and consuming States. Do you see the coal slurry pipeline issue in parallel with those two previous situations?

Mr. CRAWFORD. I do not want to be presumptuous, Mr. Senator. I think you could make a strong case for the argument that the railroad system was more critical in our Nation's development when they were built than pipelines are today. We are merely considering an alternative transportation system.

The one very important fact not to overlook, however, is that coal is becoming an ever-increasing source of energy in this Nation. We are concerned about our dependence on foreign oil.

If you want to draw an analogy in terms of national security and the promotion of domestic sources of fuels, it may be that in 50 years we might consider S. 267 a critical issue. It is certainly true that we want to provide competition to maintain our viability as producers and shippers of coal at the lowest cost.

Senator EXON. How long have you been associated with the coal slurry pipeline industry?

Mr. CRAWFORD. My background has been first in finance and then in 1974 with the A. T. Massey Coal Co. as executive vice president in charge of their development program. I became involved in coal pipeline projects 2 years ago when I joined Transco Energy Co.

Senator EXON. My experience predates yours, Mr. Crawford. I suppose it was 10 or 12 years ago—I suppose the record will indicate when it was—that I was Governor of Nebraska, and the ETSI people, or the forerunners of the ETSI people, came in to see me. I remember very well talking about this new concept, which I had never heard of before.

And I first spoke about the concern for the conservation of our water in the food-producing States, and then about the matter of eminent domain. They did not want eminent domain—there is no reason for them to acquire eminent domain authority at the State or Federal level because they felt that they had such a good product that they could make arrangements with the States, which would certainly protect the integrity of the ownership of the land.

Well, I must say that ETSI essentially did that. They, as you know, have a pipeline that had to skirt Nebraska, but they have a pipeline now, and there is a big legal battle going on now over the water that they are going to flush the coal with.

My question is. If ETSI was able to complete contractual arrangements to build their pipeline across, what, five States——

Mr. CRAWFORD. I believe so.

Senator EXON. Why is it not possible for your company to do that without, as this bill proposes to do, eminent domain rights at the Federal level?

Mr. CRAWFORD. Well, Senator, ETSI has acquired 90 percent of the rights-of-way, but are lacking 10 percent. ETSI has admitted that it cannot build the proposed pipeline without Federal eminent domain.

But the other fundamental difference is that the land-owning situation in the West is different from the East. In the West, the railroads, acquired and were granted the surface rights to build the railroads. The subsurface rights are owned by adjacent property owners.

In the East, that is not the case. In the East, the railroads own the property in fee simple, both surface and subsurface. ETSI was able to litigate in excess of 60 law suits at a cost of over $20 million, in order to acquire 90 percent, of the rights of way but the last remaining 10 percent will require Federal eminent domain.

Senator EXON. Well, when ETSI told me originally that they would not require eminent domain rights, they were just mistaken?

Mr. CRAWFORD. They were, and they have found that eminent domain rights are now required.

Senator EXON. One more question, Mr. Chairman, for Mr. Crawford. What about the environmental concerns of the pipelines, other than the digging up of the ground to lay the line?

I read a very interesting piece at one time with regard to the draining pools, repair stations, and related issues. As I understand it—and I am not an engineer—every so many miles or every so many hundreds of miles you have to have some kind of a drainage pit, and if the line clogs up you have to get in there and unclog it and get it moving again.

And there were some environmental concerns as to what would be created with this operation. Am I properly interpreting that? How often would we have to have mechanical facilities and land to drain out the coal slurry material that was in the line when it

clogged up? How do you address the environmental concerns connected therewith?

Mr. CRAWFORD. First, in order to allay your fears, a pipeline, in order to be qualified, would have to file a Federal Environmental Impact Study and would have to meet all environmental laws and regulations, both State and Federal. There will be a procedure that will be first considered before a pipeline is allowed to be built.

In terms of the experience of the Black Mesa pipeline, there have been very few operating problems. They did have one or two spills, but they did not create the environmental hazard similar to oil spills.

I think you have to remember that coal is a particle. It does not dissolve in water. Coal slurry is not a liquid material like oil which can seep into the ground or spread over the water and be a hazard to our environment.

The overriding consideration is that pipelines will not be built unless they are predetermined to be environmentally sound.

Senator EXON. Are you saying, Mr. Crawford, that if at some time in the future you were to build a coal slurry pipeline across Nebraska, the only environmental concerns we would have would be the digging up of the ground to put the pipeline through—and you would not have any basins for drainage?

Mr. CRAWFORD. I do not believe so, Senator. Again, my experience is not of a technical nature, however, the stations that you are referring to along the route of the pipeline are pumping stations. The slurry stays within the pipes. The pumping stations are placed roughly 50 to 60 miles apart, depending on the terrain.

Senator EXON. Do you have facilities to drain in that area if you have to? Or is it just a pump station?

Mr. CRAWFORD. We do not. It is just a pump station, yes, sir. So the concern you would have is whether there might be a rupture in the pipeline. As I say, there has been one instance at Black Mesa which was caused by a human error and malfunction of a valve.

I would like to reverse the argument and stress the positive side on the pipeline. The pipeline is going to be a subsurface pipeline, operating under ground—no noise pollution, no dust, none of the maintenance of railroad beds, none of the concern that you now have regarding surface transportation of railroads.

Environmentally, a pipeline can be an advantage rather than a disadvantage.

Senator EXON. We have many other concerns, Mr. Chairman. I know we have other panels we want to hear from. I appreciate very much Mr. Dempsey and Mr. Crawford coming before our committee this morning.

Mr. CRAWFORD. Thank you.

Senator DANFORTH. Thank you very much.

Mr. DEMPSEY. Thank you, Mr. Chairman.

Mr. CRAWFORD. Thank you, Mr. Chairman.

Senator DANFORTH. Mr. Taylor.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY BILL SOUTHARD, DIRECTOR, OFFICE OF TRANSPORTATION ANALYSIS; JANICE ROSENAK; LEGISLATIVE COUNSEL; AND RON YOUNG, DIRECTOR, BUREAU OF ACCOUNTS

Mr. TAYLOR. Good morning, Mr. Chairman, Senators Long, Exon.

I would like to introduce those at the table with me. On my immediate left is Bill Southard, Director of our Office of Transportation Analysis. On my immediate right is Janice Rosenak, the Commission's Legislative Counsel. And on my far right is Ron Young, the Director of our Bureau of Accounts.

We thank you for this opportunity to comment on issues related to coal slurry pipelines and specifically S. 267, the Coal Distribution and Utilization Act of 1983. As you may know, the Commission has testified or submitted comments on this subject a number of times over the past several years.

Most recently, on April 13, 1983, we testified before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation on H.R. 1010, the "Coal Pipeline Act of 1983," a bill similar in many respects to S. 267. Last year, on September 17, 1982, we submitted comments to this subcommittee on an earlier version of coal slurry legislation, S. 1844, the "Coal Distribution and Utilization Act of 1982." In addition to discussing pending legislation, I will attempt to respond to the specific issues mentioned in the subcommittee's letter dated April 29, 1983.

The purpose of S. 267 is to facilitate the development of interstate coal pipelines by granting the Federal power of eminent domain to those coal pipelines that are determined to be in the national interest.

The bill would give authority to the Secretary of Energy to determine whether the construction of a pipeline is in the national interest. Once such a determination is made, a person proposing to build a coal pipeline could then acquire rights-of-way over private lands by exercising the Federal power of eminent domain. If an interstate coal pipeline is constructed, it would be regulated by the Interstate Commerce Commission under existing law.

The question of coal slurry pipelines involves a complex set of issues—including land management, environmental concerns, water rights, and transportation. In deciding whether the Federal Government should provide certain economic interests with the substantial right of eminent domain, Congress must address and balance all of these concerns. In this regard, we note that the applicability of State water law was a major focus of the markup of S. 267 by the Senate Committee on Energy and Natural Resources, as well as in the markup of H.R. 1010 by the House Interior and Insular Affairs Committee.

It is our understanding that the administration is not going to change its position that the Federal power of eminent domain should not be given to coal slurry pipelines.

In general, I must say the Commission favors construction of coal slurry pipelines, and the reason is to enhance competition. However, it is and has been the Commission's view that the delegation of

the Federal power of eminent domain involves important policy questions which we think Congress should decide.

It is, of course, the transportation issues relating to coal pipeline development that are of concern to the Commission. Should Congress decide to grant the right of eminent domain to coal pipeline operators in a process which involves findings on transportation issues, it is our view that it would be appropriate to give the Commission implementing authority, as proposed in various bills, including H.R. 4230, the bill favorably reported by the House Public Works Committee last year.

In contrast, S. 267 would give authority to the Secretary of the Department of Energy to determine whether the construction of a pipeline is in fact in the national interest. Because it appears that transportation issues will have to be considered in the process proposed for granting eminent domain for coal pipelines, we believe the Commission should be the agency to make that determination.

For example, we would point out that the required findings in S. 267 include several matters relating to coal transportation issues, matters particularly within the Commission's expertise. The bill requires findings concerning the pipeline's likely effects upon competition, the extent to which the pipeline would reduce coal transportation costs, and consideration of alternate routes or means of distributing coal. Also, as indicated above, various aspects of coal pipeline operations, such as rates, already are subject to Commission regulation.

In addition to eminent domain and agency jurisdiction, major areas of legislative concern include entry standards, rate regulation, the extent of the common carrier obligation, and certain technical issues such as the control of construction cost overruns, as already brought up this morning, take-or-pay contracts, overcapitalization, and vertical integration.

As you know, the Commission has been actively pursuing a policy of deregulation of transportation, pursuant to the extensive reforms contained in the Staggers Rail Act of 1980 and the Motor Carrier Act of 1980. Consistent with this policy, it is our belief that the public interest and competition are best served by imposing as few restrictions as possible on coal slurry pipeline operation.

Thus, in the area of entry, we do not believe changes are necessary in the current statutory scheme under which no ICC certificate of public convenience and necessity is needed for a coal slurry pipeline to commence operations. We note that the coal slurry proposals of recent years have not provided entry standards per se. They simply require a certificate or a national interest finding if the applicant seeks to utilize the Federal power of eminent domain.

It is our understanding that, due to the size of the capital investment involved, uninterruptible long-term contracts will be essential in order to obtain financing to construct a slurry pipeline. This was confirmed by the STA testimony here this morning. This has important implications, both for rates and the common carrier obligation.

With respect to rate regulation, the Commission has the authority under existing law to require reasonable rates. We would not anticipate, however, that maximum rate regulation would ordinarily

come into play, since most of the transportation would presumably be pursuant to contract.

It is our general belief that the provisions of such contracts should be left largely to the business judgment of the parties themselves, at least from a transportation point of view. By the same token, the negotiation of a take-or-pay contract should be left to the business judgment of the parties.[1] Thus, coal slurry contracts, in our view, need not be subject to any more scrutiny than that imposed on rail contracts under the Staggers Act.

With respect to the common carrier issue, there may be some ambiguity as the bill is presently drafted. Section 9 states that the act will not otherwise affect the regulation of interstate common carriers. This could be interpreted to mean that coal pipeline carriers would continue to be subject to a common carrier obligation to provide transportation on reasonable request.

While the common carrier obligation does not require any carrier, whether it be a railroad, a trucking company, or a pipeline, to increase its capacity upon demand, the existence of a general common carrier obligation has occasionally caused some confusion and needless litigation in this area. Therefore, this issue should be addressed in the legislation.

During recent hearings, there has been discussion of whether there is a need for regulatory authority to control construction cost overruns and overcapitalization of coal slurry pipelines. It is the Commission's view that regulatory intrusion into these areas is not warranted in circumstances involving arms-length bargaining in which a contracting party should be able to protect itself.

At last year's Senate hearings, there was testimony to the effect that a utility would protect itself by contract terms, so that in fact it would be the pipeline, not the utility or ultimate consumer, that would bear the risk of cost overruns. It seems to me that would be the case. Of course, the State public utility commissions can prohibit passthroughs, if warranted. Thus, we question the need for a Federal regulatory review of these matters. Moreover, the overall objective should be to facilitate transportation competition. If coal slurry operators are going to be competitive, they will need to control these areas themselves.

You have inquired whether vertical integration of coal slurry pipeline operations should be allowed. Based on last year's hearing record, it appears your concern is directed toward utilities or their subsidiaries which own and mine coal and may also own or have an interest in coal slurry pipelines.

At present, I do not believe any of the proposed pipelines are to be owned by utilities. I did hear the testimony this morning about Virginia, and that is the first one I have been made aware of. In any event, I do not believe that prohibition is necessary. In this regard, I would note that despite the commodities clause, due to judicial interpretation—the cases are cited in our lengthier state-

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[1] It should be noted that the term take-or-pay contract originally pertained to the purchase of a commodity, not the carriage of it. Thus, these contracts are prevalent among gas pipelines, which own the gas they transport. As relevant here, they could more appropriately be termed "ship or pay" contracts. Similarly, rail contracts allowed under Staggers can contain penalty clauses for shippers if the agreed-on volume is not transported.

ment—the railroads have generally not been prohibited from transporting coal which is owned by an affiliate.

The commodities clause was enacted in 1906. Early court decisions suggested that a holding company's control through stock ownership of a railroad and nontransportation subsidiary which shipped its products over the subsidiary carrier established a prima facie violation of the section.

But in *United States* v. *Elgin, Joliet and Eastern Railway Co.*, 298 U.S. 492 (1936), a majority of the Court ruled that the commodities clause did not bar EJ&E, wholly owned by United States Steel Corp., from transporting commodities manufactured by other subsidiaries of United States Steel Corp. The Court said that proof must establish that the carrier in the alter ego of its sole stockholder before the commodities clause band applies. While proof of United States Steel's domination of EJ&E was substantial, pertaining to such matters as dividend payments, capital expenditures, selection of corporate officers, carrier leases and trackage rights, use of EJ&E's surplus funds, and the handling of intercompany accounts, it did not, in the majority's estimate, satisfy the "alter ego" test.

The Government's effort to persuade the Court that *Elgin* was wrongly decided failed by a 5–4 vote in *United States* v. *South Buffalo Railway Co.*, et al., 333 U.S. 771 (1948). In speaking for the majority, Justice Jackson said that *Elgin* might be decided differently if it were a matter of first impression. But since it was a matter of statutory construction and not constitutional import, its reversal or modification should be left to Congress. He noted that Congress failed to follow the Commission's recommended change in the commodities clause which would have, among other things, overruled the *Elgin* decision.

While the commodities clause as construed by the courts does not prohibit a railroad from hauling its affiliate's commodities, the discriminatory aspect of such an undertaking by either a railroad or a pipeline is reduced by the Elkins Act, which does make it a criminal offense for a carrier to grant and the shipper to receive any rebate or concession with respect to transportation.

Also, as I mentioned earlier, State PUC's examine these transactions very closely, and I have some personal knowledge of that and have on occasion disallowed the cost of producing coal by a utility subsidiary if the cost does not appear competitive.

Finally, I would note that bills under consideration in both the Senate and the House contain provisions for an antitrust review by the Attorney General. No national interest finding can be made if the Attorney General determines that approval of the application is not consistent with the antitrust laws. This provision should provide protection in instances where vertical integration might be deleterious.

In conclusion, I call your attention to the fact that significant resources would be expended for administrative and other costs incurred in processing a request for the use of the Federal power of eminent domain, particularly for environmental studies. S. 267 contains a provision for reimbursement to the Secretary for administrative and other costs incurred by the Secretary in processing an application. As drafted, however, the funds may go to the Federal

Treasury, a result which appears contrary to the intent of the provision. We believe it appropriate, if the Congress concludes that applicants should pay the administrative costs, that reimbursement be made to the agency involved. This could be accomplished by language similar to that set forth in the attached appendix, specifying that a special account would be established for reimbursement funds, which are authorized to be appropriated until expended.

I repeat that the Commission takes no position on whether the right of Federal eminent domain should be granted to coal slurry pipeline operators. We believe that is your decision to make.

With regard to the transportation issues involved, if the Congress believes Federal eminent domain should be provided, the Commission believes the ICC is the appropriate agency to be given authority under that legislation.

Thank you very much. I would now be happy to try to answer any questions which you may have.

[The attachment referred to follows:]

DRAFT LANGUAGE

"(1) Each person proposing to construct an interstate coal pipeline distribution system who has filed an application under this section shall reimburse the [Commission or Secretary] for administrative and other costs incurred by the agency in processing the application in such a manner as shall be prescribed by regulation.

"(2) The [Commission or Secretary] is authorized to require a deposit of any payments under paragraph (1) of this subsection intended to reimburse the United States for administrative and other costs with respect to any application filed under this section. The moneys received for administrative and other costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended.

"(3) As used in this subsection, "administrative and other costs" include, but are not limited to, the costs of special studies, environmental impact statements, or other special activities.

Senator DANFORTH. Senator Long.

Senator LONG. You heard the previous witnesses, Chairman Taylor. I find myself thinking that in the history of this country we started out with ocean shipping, and then we built highways, canals, waterways, inland waterways, railroads and then along came pipelines to move oil and gas around, then airlines, and then transmission lines to move power around.

Now we are talking about a coal slurry pipeline. Now, have we in our history denied some new technology or some new means of transportation, the opportunity to compete with others?

Mr. TAYLOR. Not that, I am aware of. I think one of the great things about this country is that, as new technologies have been developed, we have gone to every length to see that they be given an opportunity to flourish and that the most efficient party able to provide a service is allowed to do so.

Senator LONG. Now I cannot recall—or perhaps I just have not lived that long—if there is such an instance. I am not aware that the shipping interests ever opposed the building of the railroads in this country—although the railroads have fought vehemently against building waterways; and even now they are still at it.

But I do not recall other means of transportation fighting against the construction of the railroads. Now has that been going on, or can you recall a time when it did go on? I can recall railroads out there using cutthroat tactics to try to keep other modes from being

built, but can you recall anyone trying to prevent the railroads from being built?

Mr. TAYLOR. No, I cannot.

Senator LONG. Basically it seems to me that we are talking about a new technology, a cheaper, more effective unit rate to move a product. If we are going to deny it, either at the Federal level or the State level, we are going to deny people the right to compete. Would not this be the exception in the whole history of the transportation industry—denying one industry, one method of transportation, the opportunity to compete with the others?

Mr. TAYLOR. I believe it would. I had some personal experience with the Black Mesa pipeline. I was involved in that a little bit through the utilities that are concerned with the Mohave plant in private practice before coming to the Commission. The Black Mesa pipeline was built in the late 1960's, and it is the only one that is really functioning today in the United States.

It does a very fine job, and I think it is a shame that more pipelines have not been built already. I am one of those who does not believe that it is going to put the railroads out of business. I think they can be competitive and in fact will be, and I think they have the same opportunity to enter into the long-term contracts with the utilities that the slurry pipeline people have, and in fact they are doing that.

Recently, the Santa Fe has entered into two 39-year contracts.

Senator LONG. Well, we have a situation discussed in an article here in Forbes where Kansas City-Southern, for example, has been unwilling to lease unit trains available from other railroads to utilities in order to move coal more cheaply. They are very proud that this has helped them to maximize their profits.

They are making five times as much profits as they were making 5 years ago and the price has increased 400 percent. They are very proud of the fact that they denied those people the right to have the same type of service that other railroads are providing people who need the service.

Now if these folks really were faced with competition, they might be compelled to provide that service, which would save these utilities a lot of money and save the consumer a lot of money. I think they would be more considerate of the consumer in that case. You know, if they had to compete with these pipelines, they would say, you know, it might not be necessary for you folks to build a pipeline to provide the same service as others.

Mr. TAYLOR. Competition, in my opinion, is the best policeman available. It always does the job of the regulator. Whenever it is available, it seems to me we should take advantage of it.

I can give you a scenario insofar as the railroads' concern about other industries is concerned. You mentioned barge traffic on the water. One of the railroads put a premium of so much per ton on coal that was moved to the river for transport by barge down the river to your part of the country. The barge people got very upset about it and they came to the Commission and complained.

As a result of that complaint the $1 a ton was removed, so now it can move to the river at the same rate, without discrimination as it can move to the ports here on the east coast, which are owned by the railroads. I am talking particularly about export coal.

Unfortunately, my colleagues have seen fit recently to vote to deregulate export coal. All that means is that now the railroads can reimpose that sort of a surcharge and very adversely affect—and I am sure that is exactly what they will do—the availability of that barge competition.

As a consequence, it may well have an effect on whether coal winds up being exported out of New Orleans or some east coast port. That is one of the reasons why I strongly dissented in that case on the removal of regulation, because that is the exact sort of thing that is going to happen.

Now if you put the barges out of business, at least as far as export coal is concerned, maybe coal slurry pipelines would offer another competitive alternative. In my view, I think that is very important and very, very healthy.

Senator LONG. Now, let me get that straight in my mind, if I could. Prior to the Staggers Act, one could make an arrangement and the railroads had to coal carry, as a common carrier, to the nearest point where the barges could pick it up, and that being the case, they would have to compete with the barge line in hauling coal to the point where it could be exported in foreign markets.

Now you are telling me that they not only can, but they will now, proceed to place whatever penalty they desire to place on that short term, that short haul on the barge line, so that hereafter they will not have to compete with that water traffic. They could take the profit out of the water part of it.

Mr. TAYLOR. I cannot say with assurance exactly what they will do. All I know is the facts. The railroad put the surcharge on transporting coal to the river, that was going to move down the river by barge, and that surcharge was removed because a complaint was filed with the ICC. Now, if export coal rates are deregulated, made exempt, and they can charge whatever they please, at least insofar as transporting export coal is concerned. It seems to me that obviously they are going to prefer those ports up and down the east coast as opposed to taking it over to the river, because the only thing that caused them to take the surcharge off before was a complaint to the Interstate Commerce Commission. Now, if nobody can complain any longer, I think you can probably well imagine what will happen, and I suggest that that is the elimination of the competitive alternative in terms of barge traffic. To the extent that we can have pipeline competition down to the gulf ports of Houston and New Orleans, perhaps that is a substitute, since it is possible that the barges are not going to be really a competitive factor any more.

Senator LONG. So now there is the prospect that discriminatory rates do cut out competition on the one hand, while on the other hand the railroads appeal to Congress to protect them against competition from some other line of transportation.

Mr. TAYLOR. Yes. I really think they are going to be able to do business, to compete in any event. I know I heard this morning the fact that pipeline rates are going to be approximately half of rail rates, and that they are going to be so terribly much more efficient, and so on. The fact of the matter is, the costs in those pipelines are going up.

I used to hear the ETSI people talk about $2.5 billion, $3 billion, $3.5 billion. Now they are talking $4 billion, maybe in excess of $4 billion. Who knows? By the time it gets built, maybe it will be $6 billion or $7 billion or $8 billion. And I have a feeling that this so-called competitive advantage they think they are going to have is not going to be all that great. It is also going to depend on how long the line is, where it is built, and a whole lot of other factors and considerations.

Senator LONG. Well, it cost nine times what was estimated—that is my recollection—to build the Alaskan oil pipeline. Right?

Mr. TAYLOR. Yes.

Senator LONG. So it is your thought that the railroads are going to be in a much better position to compete than they would have us believe.

Mr. TAYLOR. I have a map showing where all of the proposed coal slurry pipelines are, and there are a dozen or so on the map. At least in terms of long pipeline operations, I would be surprised if there are more than three or four systems actually constructed. I cannot believe that that is going to put the railroads out of the coal business. No way is that going to happen. It seems to me it is going to create rather healthy competition.

The railroads are already getting themselves ready for that competition by entering into longer and longer term contracts themselves, as they should be. I think that is exactly the posture they should be in. They are doing their best to keep their prices down as low as they can, as they should, for the benefit of the consumer and ultimately for the electric ratepayer. I think that the mere threat of competition from coal slurry pipelines, which now appears to perhaps be closer to reality than ever before, has already done a great deal to sharpen up the railroads to be ready for the competition that is coming.

Senator LONG. I am just trying to recall. When is the last time, Mr. Taylor, to your knowledge—now, you know more about this than I do—that we had some industry coming to us saying, look, we have got a monopoly, and we do not want you to louse this thing up for us—now, do not let those people build a competing mode of transportation. When is the last time we had that?

Mr. TAYLOR. I suppose there are lots of businesses that would like to get away with that sort of thing, but I cannot remember an occasion in history where Congress has put its blessings on that sort of an approach. It seems to me that, by foreclosing the construction of coal slurry pipelines, that is in effect what Congress is doing.

Senator LONG. It seems to me you have a situation where—just read this article I ask to be put in the record—these folks are saying, we are not about to lease you people unit coal trains. No, we will make more money doing it the way we are doing it. Well, now, we have got a little monopoly situation going on here, and we are not about to give up any of our advantages. It is just hard for me to understand how they would continue to do business that way if they thought they might have some competition. I would think even the prospect of a pipeline being built alongside or parallel to them would make them loosen up and maybe give the consumer a better break.

Mr. TAYLOR. I think you are right.
Senator LONG. Thank you very much, Mr. Chairman.
[The article referred to follows:]

WHO NEEDS MERGER?

(By Lisa Gross)

With the most direct route between Kansas City rail gateway and the Gulf of Mexico, it goes without saying that the Kansas City Southern Lines railroad would fetch a premium price in the national railroad merger market. But because of Irvine Hockaday's achievements over the last 14 years, the KCS attracts more than a premium. It commands tribute.

One analyst suggests the Burlington Northern or the Sante Fe ask Hockaday—president of Kansas City Southern Industries—to name his price, add on 50 percent and buy the KCS as a bargain. It is not so much that BN or SF will need KC's strategic 1,700 miles of track once the Union Pacific and Missouri Pacific merge. It is that Hockaday has increased rail earnings 400 percent in the last five years, to $26.4 million on $321 million revenues in 1981, and make the KCS one of the most profitable railroads in the nation.

First it had to be saved, then rebuilt. Less than a year later Hockaday joined the KCS' legal department in 1968, he noticed accumulation in its stock. He responded quickly, persuading the board to institute staggered terms for directors, flushed the secret buyer—Lee National Corp., an investment and real estate firm—and exulted. Because Lee was an investment company, and KCS owned 54 percent of a mutual fund management company, University of Michigan-trained lawyer Hockaday "sued every Wall Street brokerage firm that held stock for Lee and withheld dividends." He stopped the takeover cold, eventually buying out Lee's $23 million of KCS in a trade for real estate in 1971. The next year, when he was 36, Hockaday was named president of KCS.

Then he learned that salvation was easy, redemption harder. In 1972 Kansas City Southern Industries had $139 million revenues, $7 million earnings and a railroad badly in need of maintenance. The company had spent ten years debating how much to commit to the railroad and how much to diversification, and the roadbed reflected its waffling and tough competition from trucking. But Hockaday listened closely as his marketing people talked about the 20-year coal contracts Gulf States Utilities and Southwestern Power are about to sign with mining companies in the Powder River Basin. The Burlington Northern could take that coal to Kansas City, but only KCS could take it on to the utilities in Texas and Louisiana. Hockaday "opted to bring the roadbed up to a state of the art—even to err on the side of overdoing it," and authorized what became a $341 million, ten-year upgrading program. Then he scrambled to pay for it by selling off diversifications in metal fabrication and financial services, but chiefly by husbanding KCS' capital.

When it came to negotiating shipping contracts over the newly upgraded rail, Hockaday and railroad President Tom Carter stood tough. Other railroads give coal shippers the option of buying or leasing unit coal trains. Not KCS. "We gave them prices for both, but we never intended to buy those unit trains," says Carter with a grin. If utilities want the coal, let them own the trains. That shrewd calculation has saved KCS $225 million to date. With that sort of thinking, plus strict budget controls, KCS has been able to pay for renewing its line while keeping long-term debt manageable—46 percent of capital by last year. The renewal is still paying off. This year, KCS estimates unit coal train tonnage will increase 25 percent, raising coal revenues at least 75 percent, to about $74 million.

Hockaday has brought KCS from desperation to a company with enviable options. He figures the coal surge will last another five years, based on current contracts. Adding to that, he counts on exporting soda ash from Wyoming and Montana through the Gulf—where KCS happens to own the only existing soda ash handling facility, at Port Arthur, Tex.

Then there's a new KCS innovation, the "Big D" cooperative carloading agreement with the Santa Fe at Dallas—a connection to or from the Southeast, West Coast and Central regions—which brought in $47.5 million revenues in this year's first half. KCS' share is about 20 percent. Hockaday is seeking similar agreements with Burlington and Southern Pacific, trying to make the most of his small railroad's strategic position. "Before the UP/MoPac merger talks," he notes dryly, "trying to get the big guys to listen on things like the Big D connection was like trying to teach a duck to sprint."

An eventual merger? Hockaday, 46, doesn't blink. "We think we know best how to run *our* railroad," he says firmly. the evidence confirms it.

Senator DANFORTH. Mr. Taylor, as I understand your testimony, you think that the ICC should have a role that it does not now have in the bill, that role being what?

Mr. TAYLOR. The present legislation gives the implementation of the public interest determination of whether or not a pipeline should be constructed and granted the right of eminent domain to the Secretary of Energy. My testimony is, and the position of the Commission is, that we think that responsibility is better entrusted to the Commission. The reason why is because, insofar as the transportation aspects are concerned, we already regulate railroads. If the railroads are going to come in and tell us very genuinely and very sincerely and put some facts and figures behind their contention, that in fact if a particular coal slurry pipeline is built, they are going to be out of business and the railroad is going to go bankrupt, who would be better to consider and evaluate that kind of testimony and balance those kinds of contentions than the agency that is already involved in regulating the railroads? So it seems to me that having the Commission perform that task makes some sense. There should be a provision in the bill, as I believe there is—I know there was one inserted on the House side, and I believe it is in S. 267—which allows us to evaluate the impact on other transportation modes. It seems to me the railroads should have the right to come forward and say to the Commission, if you go ahead and authorize this coal slurry pipeline and you grant them the right of eminent domain, these are going to be the consequences to us. The agency authorized to conduct that process of certificating and authorizing the construction should be able to do that balancing and that evaluation, because the railroads should definitely be given the opportunity to make that contention and to support it with facts.

Senator DANFORTH. There are several factors now in the Senate bill that are to be found in determining whether or not the pipeline is in the national interest, including, for example, would it contribute to the national security by encouraging the displacement of imported petroleum, petroleum products, and coal with domestic coal. Would it enhance the reliability of supplies of both coal and electric energy? And so on.

I take it that those kinds of findings would not be particularly within the province of the ICC, or would it?

Mr. TAYLOR. No, I think we have to say our concern really is transportation, Mr. Chairman. That is the area of our expertise. I do not think, however, that we would be precluded from listening to those who have the expertise in those other areas.

Senator DANFORTH. Could this be a shared responsibility between the Secretary for some items and the ICC for other items?

Mr. TAYLOR. That is an alternative. I had not conceived that, or really dwelt on that idea, but I think that would definitely be an alternative. Let the Department of Energy make their findings in their area, and ours in ours, and jointly come up with a result. I suppose what would have to happen is that, both would have to approve. If one agency approved a project and the other did not, then that would cause a problem but I think that a cooperative arrange-

ment could be worked out. I do not think that would be a bureaucratic nightmare if it was properly spelled out in the legislation.

Senator DANFORTH. But you would support such an approach?

Mr. TAYLOR. Yes, if the legislation contained findings that are really beyond our area of expertise, I think that would be very appropriate. Now, I am not speaking for the Commission on this, because I do not think we addressed it, insofar as the preparation of my testimony here today, but personally I would not have any objection to that.

Senator DANFORTH. But you clearly feel that a determination of whether or not a pipeline is in the national interest does include a finding with respect to its effect on rail transportation.

Mr. TAYLOR. I think that is absolutely essential. I tried to urge the rail people, rather than just taking this approach opposing the bill, to at least put forward some constructive suggestions so that if coal slurry pipeline legislation is adopted they will be prepared for that eventuality. For example, the railroads might suggest that there be a mechanism in the legislation for the Commission to be given the responsibility to conduct such a balancing procedure as I have suggested.

Senator DANFORTH. What sort of finding would that be with respect to the effects on the railroads? What kinds of things would or should the Commission or whoever the finder of fact be looking to?

Mr. TAYLOR. Well, it seems to me the whole purpose of the Staggers act was to make the railroads healthy, and obviously, we do not want to do anything that is going to be contrary to that overall objective. We are trying to make sure that the railroads do not wind up as wards of the Government. If a railroad can actually come in and support a contention that if a particular coal slurry pipeline is constructed from X to Y, the economic impact upon that railroad's operation if it is primarily a coal hauler is going to be as follows, and they can come in and show the figures and put the case forward, then it seems to me that we should clearly take into account what the public interest ramifications are of perhaps putting that railroad out of business. It would be out of business not just for coal but for a lot of other things besides. My point is that to the extent they can make those kinds of contentions and can put their proof forward, they ought to have some forum where they can present their case, and who better but the ICC?

Senator DANFORTH. And when they would proceed in this kind of matter, what would it be, a factual presentation that they would make?

Mr. TAYLOR. That is what I would anticipate, and to the extent that there was a great deal of evidence to be heard, we, like anything else, would set it up in front of an administrative law judge, develop a record, and see how that record came out, and that would then be submitted to the Commission. Well, a decision of the ALJ would first be prepared, then go to the Commission. We conceivably might have some oral argument on it. In a case of that magnitude, I would guess we would. I would certainly want to myself.

My legislative counsel is pointing out to me that there is a procedural section in the bill at the moment, I believe, on page 25. It follows the small and independent coal producer access,the 10 per-

cent provision. Subsection B does have some procedures set forth at the moment. Whether those should be amplified upon or not, I have not studied them carefully enough to suggest that. We could look at that and submit something for the record if you would like.

Senator DANFORTH. Just hypothetically, if a railroad could make a strong case——

Mr. TAYLOR. Yes.

Senator DANFORTH [continuing]. That it was being affected detrimentally by a coal slurry pipeline, and it was a very serious detriment——

Mr. TAYLOR. Yes.

Senator DANFORTH [continuing]. Then the ICC could find that the coal slurry pipeline was not in the national interest.

Mr. TAYLOR. I think you are going to have to balance—you have to tell us what goes in the scale here, and how we should evaluate it, and we will try and put the things in the scale based upon your directives, then take the reading, and if the reading comes out that it is adverse to the public interest to have this coal slurry pipeline constructed, it seems to me the Commission would have to weigh all of the factors that are involved, and could decide that this pipeline should not be granted the Federal right of eminent domain. In such a case, the Commission would reason that the railroad had demonstrated very clearly on the record that the results on constructing the pipeline would be very disadvantageous, and that in turn would have such and such a result in the public interest so that we could not approve it.

Senator DANFORTH. So the bill should spell out the nature of the finding that it would want the ICC to make.

Mr. TAYLOR. I believe it should, yes. The more you spell it out, and I do not mean down to the last little nitty-gritty, the less litigation we will have. The more vague you are, and the more we resort to the weasel words of reasonable or this sort of thing, the more court cases we will have, and then the longer the whole thing gets hung up.

Senator DANFORTH. You would suggest a well drawn statement as to what effects we are looking for on alternative modes of transportation.

Mr. TAYLOR. I certainly would, and I have suggested to the railroad industry that they give some thought to that as well.

Senator DANFORTH. And to provide it in this bill.

Mr. TAYLOR. Yes, sir.

Senator DANFORTH. Now, Mr. Taylor, if we were to do this, that is, to provide that kind of responsibility to the ICC in making their determination with respect to national interest, it sounded to me in just listening to your discussion with Senator Long, it sounded to me as though you had prejudged the case.

Mr. TAYLOR. I hope not. I hope not. I personally happen to feel that coal slurry pipelines are a new technology which can provide a very, very satisfactory competitive alternative that is not going to put the railroads out of business. But I do not want to foreclose the possibility that a given railroad in a given situation might be able to come in and prove otherwise, because the fact of the matter is, we do not really know.

I do not think there is any empirical data by which either conclusion can be totally proved and established at this point in time. So I certainly would advocate utilizing this new technology, and creating increased competition. But if in fact in a given situation a railroad can show that its worst fears are really going to be justified, we should have an open enough mind to take that into account and give them a chance to establish it.

Senator DANFORTH. Senator Exon?

Senator EXON. Thank you, Mr. Chairman.

Let me followup on a question that was just asked by my friend from Missouri. I also listened with interest to the conversation between you and Senator Long, and I took it that what you were basically saying, Mr. Taylor, was that the coal slurry pipeline was just a further evolution of our transportation system.

Mr. TAYLOR. I think we could call it that, yes.

Senator EXON. You do not mean to imply that the development of a coal slurry pipeline would be as revolutionary and do as much for America as was the opening of our rivers to paddleboats, the establishment of the railroad across the United States back during the homesteading days. You do not mean in that context, do you?

Mr. TAYLOR. No, I do not. I totally agree with the testimony of the coal slurry representative who said there were no alternatives then. This is an alternative means of transportation, so certainly it is not in the same category with the first railroad line across the United States.

Senator EXON. If you were a layman like myself listening to the exchange between Senator Long and yourself, might you not have gotten the implication that this was new technology that was going to open up the transportation system like the railroads and the paddle steamer did in this country years ago? It is clearly not in the same context with most of those modes of new transportation that you and Senator Long had an exchange about.

Mr. TAYLOR. In terms of an alternative transportation system vis-a-vis no transportation system, certainly not, but it is an improvement on a transportation operation, or another alternative. There is technology, I understand now, to transport coal slurry out to the ship and process the water so it can be deposited in the ocean without any adverse environmental effects to the ocean. Since this technology may ultimately produce cheaper electric rates for America's consumers, I think it is something that we all ought to be interested in and should not discourage. I would add the proviso, as I suggested to the Chairman, that if the worst fears of the railroad industry really can be proven and demonstrated, then it seems to me somebody ought to be able to step in and see that that does not happen, if those kinds of circumstances can really be demonstrated.

Senator EXON. I would share the concern that has been expressed here by you and Senator Long and others that if indeed the railroads are taking advantage of the situation of deregulation as we heard about from several quarters and as was further brought out here in testimony this morning, and if the railroads are not recognizing the concerns of this committee and the Congress with regards to captive shippers, then there is always the possibility that we could pass laws. We could go back to full reregulation of the railroads if that becomes necessary.

I guess my concern is that if the railroads are overcharging, if they are gouging, then I think that there may be some other actions that the Congress could take, rather than just say, that the problem is going to be cured, at least in this instance, with the establishment of a coal slurry pipeline. I guess that that kind of argument is not getting through to me, especially when I realize that while we have some railroads in good shape, most of our railroads are not in good shape. In fact, taxpayers have had to come to their aid by putting taxpayers' money in to keep railroads going, because it was felt, rightly or wrongly, that railroads were an essential part of our transportation system.

I assure you that as far as my State of Nebraska is concerned railroads remain a key part of our transportation system. Maybe we will flush wheat and corn some day through one of these pressure tubes, I do not know, but I think we had better keep in mind that while none of us would approve the gouging of anyone by railroads taking advantage of a monopoly situation, the coal slurry pipeline in and of itself would not cure that situation, it seems to me, and might drive the railroads into further financial stress and strain.

So I think we have to be very careful when we say that one of the main reasons for a coal slurry pipeline is that it is going to cut the cost to the consumer. It might cut costs to the consumers in the field of energy by getting coal to a certain place cheaper. It could penalize the consumers in other areas that are equally important with the delivery of energy. Do you agree?

Mr. TAYLOR. You mentioned grain. We really do want the Staggers Act to work. I, for one, am very opposed to implementing it in such an irresponsible fashion that we wind up with reregulation. I think that is one of the challenges of my job at the moment and the challenge of the Commission—to do this whole deregulatory thing in such a fashion that we do not wind up with a situation where somebody has to come to Congress and say that we have acted irresponsibly, and let us go back and start it all over again.

The Long-Cannon Amendment was intended to prevent the kind of cross-subsidization situation that you mentioned—whereby if coal rates were so depressed they had to let up elsewhere, so the railroads would raise grain rates, for example. That is one of the reasons why we have in our agricultural exemptions insisted that grain not be exempted. Unfortunately, my colleagues, in my view very irresponsibly, exempted boxcar traffic the other day, which I guess now means that if grain is moved in boxcars it is exempt from regulation. Hopefully, the courts will address that issue in due course. But, you are right. Those kinds of things can happen, but I do not believe, and I am not testifying here today, that anybody is gouging anybody. I do not believe they are. I do not think the railroad industry at the present time is gouging anybody.

Yes, their rates have gone up. We have some figures on that which I would be happy to present for the record if you would like, but we are trying to maintain the balance. We are trying to move down this deregulatory path, but hopefully in a fashion sufficiently responsible so that somebody does not have to come back to Congress and say, you screwed it up, boys, let us start all over again.

Senator EXON. Mr. Taylor, if I understand you, by giving your Commission some additional authority here you would really be in a position, I expect, of saying yes, you can build pipeline A and pipeline B, but you cannot build pipeline C and D. Is that right?

Mr. TAYLOR. Yes, because if you do build pipeline C and D the railroad demonstrated that the impact of that would be so and so and such and such and the only conclusion we can draw is that that would be contrary to the public interest and, therefore, it should not be done.

I do not want to imply for a moment, Senator, that I think the coal slurry pipeline is going to solve all of our problems overnight. Certainly it is not. But, to the extent that there is some added competition, I just happen to be a strong believer in the fact that competition always does a better job than even the most intelligent regulator.

Wherever we can have some competition, I think that always does a better job for the public than somebody sitting in an office in Washington.

Senator EXON. One more question, Mr. Chairman.

You indicated you had had some experience with the Black Mesa project. Is that right?

Mr. TAYLOR. Yes.

Senator EXON. I had asked questions earlier with regard to the fact that ETSI claimed early on that they were not going to need any eminent domain rights. Now that position has changed. What was the situation with the State eminent domain rights with regard to Black Mesa? Did ETSI have any trouble with the owners of the land in getting rights to put that slurry line in?

Mr. TAYLOR. Senator, I cannot address that specific matter. Specifically, I got into the coal slurry operation after the line was built in the late 1960's. You have to remember, though, that that line goes across two western States that are largely owned by the Federal Government, and I am sure they did not have those kinds of problems.

The eminent domain problem is not as big in the West as it is in the East, particularly where you have a number of small landowners. There are some who have suggested that there is a way to get around an eminent domain situation which might work, at least to some extent, in the West, though I do not really see it being of much help in the East.

For example, in Virginia you have got a whole lot of small landowners. You do not have any State eminent domain. Federal eminent domain may be more necessary in that case. But we have a provision in our law at the present time. If it is just a matter of crossing rail lines—and that seems to be the big concern here for the coal slurry people—there is a provision of law at the present time that involves the crossing of rail lines.

Subparagraph (d) of 49 U.S.C. 10901 presently reads:

> Where a rail carrier has been issued a certificate of public convenience and necessity by the Commission authorizing the construction or extension of a railroad line, no other rail carrier may block such construction. . . .

Now with a very small change in words, by simply saying:

Where a rail carrier has been issued a certificate of public convenience and necessity by the Commission authorizing the construction or extension of a railroad line, or where a coal pipeline seeks to construct or extend a pipeline, no rail carrier may block such construction or extention by refusing to permit the carrier to cross its property, if the construction does not unreasonably interfere with the operation of the crossed line and the operation does not materially interfere with the operation of the crossed line, and the owner of the crossing line compensates the owner of the crossed line.

And if they cannot agree on compensation the statute provides that the ICC would arbitrate the matter. Now that ought to at least get coal slurry pipelines across railroad lines and would not involve any eminent domain. I do not want to suggest that that is a solution or an alternative or even a run around left end on the eminent domain discussion.

But at least it is another approach which perhaps would work, if the eminent domain question really becomes a hangup. I just felt that for the record you ought to have at least that possibility in front of you.

Senator EXON. Thank you. Thank you, Mr. Chairman.

Senator LONG. Can I just mention one other matter, Mr. Chairman? I am quoting here from a study of the National Energy Transportation Study, which was done by the Government.

If all the slurry pipelines currently under consideration are built and operate at full capacity, they will be able to carry 176 million tons in 1990. This amounts to 19 percent of the increase during that period in coal haulage and 13 percent of the total coal haulage.

However, a recent study conducted by the Department of Energy of the potential energy and economic impacts of coal slurry pipelines submitted by the Department of Energy in January 1980 to the ICF, Incorporated, concluded that slurry pipelines are most likely to carry between 70 and 120 million tons of coal in 1990. That amounts to between 5 and 9 percent of the total coal to be transported in 1990.

So what we are talking about here is somewhere around 5 to 9 percent of the total of coal transported in 1990. Even if you take the other figure, which is higher, we are talking about maybe 13 percent of the total business or 19 percent of the increase of coal to be hauled.

Mr. Chairman, I do not think it makes you sound like you are prejudiced or unfair or incompetent or incapable to sit and do justice on a hearing when you simply say that someone who wants to compete for maybe 10 percent of the business should have an opportunity to make his case, and if he can show he has something to offer the public, to go ahead and do it.

That is all we are talking about here, I think.

Mr. TAYLOR. That is my approach to the whole thing and I certainly have no built-in prejudice for or against any given pipeline or any given railroad. It seems to me that if a pipeline can be built and do a more efficient job and provide a competitive alternative and serve the public interest, it ought to be allowed to happen.

To the extent that the public interest is going to be adversely affected by the construction of a pipeline in terms of what it would do to the railroad situation, that ought to be evaluated and weighed, and I would say the Commission ought to be able to do that with an entirely open mind.

Senator LONG. Well, let me further say I am not the only Senator around here who is very concerned about his consumers. You do not have to go any further than the Senator sitting right beside

me, Mr. Danforth. When he feels like his folks are paying too much for the natural gas up there, he gets concerned about it.

We have seen him voting for amendments that say hold on just a minute. He does not want too high a charge for delivering gas or delivering anything else, I am sure, to his consumers. As for this Senator, just having heard the testimony saying, you know, competition is a good thing, I do not think it would be unfair to call as a witness the investor-owned electric utility people.

The utilities feel like they are getting the worst of it. They feel like they are being treated very badly in what has happened here, because they are being required to raise their rates to the consumer and the consumer is screaming to high heaven about it. They are then required to go to the State public service commissions to ask for increases, and in some cases are being turned down or denied the full increase to cover these increases in costs. That is not one public utility criticizing another public utility.

They are in here criticizing the railroads and the Commission. As you know, Mr. Chairman, I have gone out of my way to express myself to you, just in case anybody had any doubt about it, that I feel that we have the right to call upon your Commission to look at this problem because we feel in the last analysis as though we are representing the people—I am doing it just as the Senator, the chairman of the subcommittee, Mr. Danforth is doing it, each in our own way, as the good Lord gives us the likes to see it.

Basically I feel that competition is good for the public, and in the last analysis I think anybody is going to have great difficulty proving that the public does not benefit from competition.

Mr. TAYLOR. That is my view.

Senator LONG. That is your view and mine, and I do not think you are going to find many people who do not feel that way. Now I love the railroads. My State has those people. They are good people. They have been nice to me. Sometimes we have not always been able to agree, but I have not always been the guy that they fought with.

I have had people come to me and criticize me as though I have been taking the railroads' side in a difference of opinion with labor. The railroads are good people, but, by golly, they ought to be able to compete just like everybody else, and that is what we are talking about.

Mr. TAYLOR. I think they can. I think they can successfully.

Senator LONG. They can, and we ought to help them compete. We ought to help them.

Thank you very much.

Senator DANFORTH. Mr. Taylor, with regard to the common carrier question, in your comments last year to the Senate Energy Committee you said, and I quote, "H.R. 4230, as reported by the House Subcommittee on Surface Transportation, specifically addresses the unique situation of pipelines. Basically, the House bill allows coal slurry operators to elect to provide all or a part of the transportation under contract and it sets forth provisions and procedures designed to ensure that all potential shippers will be treated fairly and on a nondiscriminatory basis. In general, we believe these provisions present a workable approach to the issue of common carrier responsibility."

Is that still an accurate statement of your views?

Mr. TAYLOR. Let me clarify that a little bit Mr. Chairman, particularly in light of the discussion you had this morning as to whether or not they are common carriers.

I think you probably can take the approach that before the pipeline actually goes into operation and while they are looking around for the customers and getting themselves set and so on that the pipeline is a common carrier. I am taking into account, this 10 percent setaside provision, and I would agree, by the way, with the testimony that that is important for the East and not as important in the West and that that should be made available to the smaller coal producers in Appalachia and so forth. After having made those decisions and put their package together, so to speak, I would have to say that from there on out I do not think they are a common carrier.

I think they are a contract carrier because they are going to sit down and make fairly long-term contracts. You went through that yourself. The coal pipeline operator seemed to indicate—at least that was my deduction from the testimony—that a minimum of 10 years would be required. That is a fairly long-term agreement. It seems to me that at that point in time they really in essence become a contract carrier for their service.

I think, however, the important thing for Congress to do in this regard is not to get into a whole long dissertation about why it is a common carrier, which I think is the original approach, and then to not say anything about it. It seems to me to be the approach of S. 267 to perhaps not say enough. You really do need to address it, because this is one of those areas that if it is sort of left swinging in the breeze it is probably going to result in litigation.

I think it could be and should be clarified, because there are the common law concepts of what constitutes common carriage, regardless of what you do or do not put in the legislation. Again, without getting into specifics today I think we could perhaps submit something that would be helpful for the record to clarify that proposition for you.

Senator DANFORTH. All right, and particularly with respect to whether or not potential shippers will be treated fairly and on a nondiscriminatory basis.

Mr. TAYLOR. I think that is important, absolutely. Somehow the selection, the 10 percent setaside up front, has got to be made to work. In my opinion, and the language of S. 267 is a very good start on it.

I am not suggesting there might not be any specific improvements in that, but I do think that that language, together with service obligations, particularly aimed at eliminating discrimination, is perhaps something that could be addressed a little more specifically than it is at present.

Senator DANFORTH. Well, if you could do that and give us your advice on that, I would appreciate it.

Mr. TAYLOR. I most certainly will.

[The following information was subsequently received for the record:]

As I have previously pointed out, the nature of pipeline operations may well preclude the application of a "common carrier obligation" in its usual sense. Thus, a

bill which squarely faces this issue, and which includes a clear contract provision, could avoid needless litigation.

As mentioned in my prepared statement coal slurry pipeline contracts probably do not need to be subject to any more scrutiny than that imposed on rail contracts under the Staggers Act. Section 208 of that Act (49 U.S.C. § 10713) clearly sets forth the rights and obligations of the parties and specifically deems service under an approved contract to be "a separate and distinct class of service."

With regard to your concern as to whether or not potential shippers will be treated fairly and on a non-discriminatory basis, you may be interested in the approach followed last week by the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation. In marking up H.R. 1010, the "Coal Pipeline Act of 1983" the Subcommittee reported out an amendment in the nature of a substitute which specifically addresses this matter.

The amendment requires, among other things, that an applicant for a certificate for coal slurry pipeline operations notify the chief executive officer of each State through which the proposed pipeline passes, and publish notice in the Federal Register [proposed new 49 U.S.C. § 10952(c)(3)]. In addition, before an application can be filed, the applicant must publish a notice of intent to file the application for at least four consecutive weeks in a newspaper of general circulation in each county through which the proposed pipeline passes. Finally, the applicant must take such other steps as may be necessary to notify interested coal producers and coal users of the filing of the application [proposed new 49 U.S.C. 10952(d)]. The notice is required to indicate that any person interested in using the pipeline is to notify the applicant and the ICC. Such a person thereby becomes an "original supporter" and has the right to contract with the applicant for the volume of coal which the original supporter requested in the certification process, unless transportation of such coal is not compatible with the pipeline. The original supporter may file a complaint with the Commission if no such contract is entered into, and the Commission may order the carrier to provide the transportation. (Proposed new 49 U.S.C. § 10954).

It would seem that this approach should ensure fair treatment to potential shippers on a nondiscriminatory basis. Also, the House bill recognizes the dichotomy between common and contract carriers by, in effect, treating applicants as common carriers before pipeline operations are commenced, and as contract carriers thereafter.

Senator DANFORTH. I only have one final comment, and that is it strikes me that if Senator Long were a pipeline and I were a railroad and you were a utility and he had a 30-year take-or-pay contract with you, to call Senator Long and me competitors would be stretching the word "competitors."

I do not see any competition in these long take-or-pay contracts at all. I think it is locking up captive customers, and I think that if the customers end up owning the pipeline or part of the pipeline it is even more anticompetitive. So if we want competition, let us get competition and let us do it by, for one thing, preventing these take-or-pay contracts from being in existence and, for another thing, preventing the utilities from owning the pipelines.

Mr. TAYLOR. Well, I do not see the scenario of the utilities getting into the pipeline business. I think they have had that opportunity. They have got enough problems from a regulatory standpoint and from the State commissions, so I really do not think that is very likely.

Senator DANFORTH. We should prevent it by statute.

Mr. TAYLOR. I do not know that you have to do that. I think the State utility commissions will take care of whatever potential public interest abuses might occur, and if you have got surveillance from the antitrust people as well, it probably eliminates the problem.

But what I mean by competition, if I could just comment on that, is that you have as much right to lock me up for 10 years as Senator Long does. There are provisions in some of the railroad con-

tracts now which maybe you cannot really call take-or-pay as such, but which come awful close to it.

Senator DANFORTH. I hear what you are saying and I will have to look into that and maybe they are both wrong. I mean, maybe long-term rail contracts are no better than long-term take-or-pay contracts for the pipelines, but it seems to me that without commenting on the rail situation and reserving any judgment, because I do not know, that a 30-year or 20-year contract, take-or-pay, which absolutely locks up a utility is the farthest thing from competition.

I mean, it might be competition in who gets the initial contract, but any changes that could happen in the future with respect to new technology, cheaper method of delivery, the development of these unit trains and so on, any changes in that regard would just be absolutely prohibited.

Mr. TAYLOR. Well, if you just think about it out here in the abstract, certainly does not appear to be competitive. But as a practical matter, having had some experience with the Black Mesa pipeline, they entered into a long-term contract out there too—Edison, on behalf of the various participants on the Mohave plant, with Peabody Coal as the supplier, I believe. It is on an Indian reservation in Arizona.

And the Black Mesa pipeline has the transmission operation, and they were very, very long-term agreements and they had some price escalation provisions in them. They found that before those price escalation provisions came into being that the utility was having certain problems with the provisions. But, more importantly, the coal producer, in an effort to get this long-term contract, had really put in a price that he could not live with.

There were problems on both sides. So what did they do? They sat down and renegotiated the thing and came up with an entirely new agreement.

Senator DANFORTH. Would you not agree that at the very least there has to be a right of renegotiation?

Mr. TAYLOR. Absolutely, absolutely. I do not think anybody in this day and age can sit down and make a 30-year agreement that is cast in bronze. It has to have those kinds of mechanisms in it. What I am pointing out in this case, is that even before price increases were triggered into effect, the parties themselves voluntarily sat down and renegotiated when they found they had an agreement that they could not live with.

Now I suppose that if they had not been able to come to an agreement during the renegotiation, even though it was originally a 30-year agreement, there might have been an option or a rail alternative. There was not in this case, as was pointed out, because it was not really feasible to build a rail line.

But I suppose there was some way here where there was a rail alternative and if the parties had not agreed during the renegotiation, they might have turned to the railroad as an option.

Senator DANFORTH. Thank you very much, Mr. Taylor.

Mr. TAYLOR. I appreciate being here, Mr. Chairman.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question.—Would you please comment on the characteristics of contracts entered into by the railroads for the movement of coal since the passage of the Staggers Act?

Answer.—On June 1, 1983, the Commission had 285 active coal contracts on file (37 short term contracts have previously expired). These contracts were filed by 33 separate railroads; the most active carriers in this area are the Chessie System (70), Norfolk Southern (69), Conrail (40) and Burlington Northern (17).

Railroad contracts have been executed with a variety of customers including utilities, exporters, foreign buyers and domestic industrial users such as steel and cement manufacturers. Approximately half (142) of all coal contracts involve a port movement which includes inland river and Great Lake ports.

As a general rule, most contracts do not involve the dedication of equipment by the railroads; rather, the cars are supplied from the free running fleet. Many contracts, particularly those with utilities, involve the use of shipper-owned cars.

Question.—Specifically, do these contracts include minimum tonnage requirements and market or inflation adjustment clauses?

Answer.—Almost all contracts include minimum tonnage requirements, and all contracts with a duration of 1 year or longer include some type of inflation or cost adjustment clause.

Question.—What is the average duration of these contracts?

Answer.—Of the 285 active coal contracts, the durations are:

1 year or less	135
From 1 to 5 years	108
From 5 to 10 years	19
Over 10 years	23

The duration of coal contracts ranges from 30 days to 39 years. The average duration for all contracts is approximately 3 years.

Question.—How would these contracts compare to the take-or-pay contracts which would be required for coal slurry pipelines?

Answer.—Since we have not had an opportunity to examine a coal slurry pipeline contract (indeed, to our knowledge none has yet been signed) and have heard differing estimates as to what would be contained in them, we cannot really "compare" them to rail coal contracts. However, we can provide some data on existing rail coal contracts.

Of the 285 active coal contracts, 11 have provisions somewhat analogous to take-or-pay provisions, and 86 have provisions whereby a reduced rate penalty pay-off is required on deficit tonnage. The average duration of the contracts with provisions close to take-or-pay is 7½ years. The duration of the 86 contracts referred to above ranges from less than 1 year up to 19 years.

Question.—How would you envision the regulation of pipeline contracts as compared with that currently in place with respect to rail contracts for the movement of coal?

Answer.—Our jurisdiction over railroad coal contracts deals primarily with a railroad's continued ability to carry out its common carrier obligations under the provisions of 49 U.S.C. 11101. We have received three complaints that a carrier would be unable to adequately serve shippers because of commitments contained in a filed coal contract. The Commission decided in those instances that the facts as presented did not warrant an investigation.

The Commission may limit a rail carrier's right to enter into future contracts following a finding that additional contracts would impair the carrier's ability to fulfill the common carrier obligation, but, under the provisions of section 11101(a), it can not order the cancellation of existing coal contracts. That section, as amended by the Staggers Act, allows a carrier to fulfill its commitments under approved contracts before responding to other requests for transportation. As is apparent from the very limited number of complaints which have been filed, the railroads have not entered into such large equipment commitments under coal contracts as to raise questions concerning the common carrier obligation.

With respect to coal pipeline contracts, as stated in my testimony, it is the Commission's general belief that the provisions of such contracts should be left largely to the business judgment of the parties, at least from a transportation point of view. Thus, coal slurry pipelines, in our view, need not be subject to any more scrutiny than that imposed on rail contracts under the Staggers Act.

Question.—The Staggers Act permitted railroads to enter into contracts but still retained their common carrier obligation. Concern has been raised that coal pipe-

lines would have an unfair advantage because they would not be subjected to the same type of obligation. To what extent do you feel this common carrier obligation prevents the rail industry from competing with pipelines—would this obligation interfere with the railroad's ability to negotiate contracts in competition with the pipelines? To what extent could and should coal pipeline legislation address this issue?

Answer.—I do not believe the railroads' common carrier obligation would prevent the rail industry from competing with pipelines to any great extent. Although a shipper may file a complaint with the Commission alleging individual harm from a rail contract due to impairment of the common carrier obligation [49 U.S.C. § 10713(d)(2)(A)(i)], and the Commission may limit the right of a rail carrier to enter into future contracts following a determination that additional contracts would impair the ability of a rail carrier to fulfill its common carrier obligation [49 U.S.C. § 10713(f)], such a determination has not been made. Under the circumstances, it seems unlikely that this obligation would interfere with the railroads' ability to negotiate contracts in competition with pipelines.

Generally, the most important aspect of the railroad's common carrier obligation is transportation capacity or car supply. In the area of coal cars, distribution of cars among shippers is significant enough to merit specific statutory direction in 49 U.S.C. § 11126. However, unlike agricultral commodities governed by 49 U.S.C. § 10713(k), coal shipments are not subject to any special restrictions on contract commitments of capacity. Thus, the railroads are free to commit equipment to contracts up to an undefined level which will not impair their ability to meet their common carrier obligation.

As indicated, the Commission has not denied approval of any railroad contract as an impairment of the railroad's common carrier obligation. While this favorable experience, and the few complaints filed (discussed in my response to a prior question), demonstrate that rail contracts have worked well since passage of the Staggers Act, the recession and generally weak demand for transportation have created excess car supply, so that the railroads have had little difficulty meeting demands for service.

When the economy improves and demand for rail transportation increases, the railroads' common carrier obligation could become the rationale for more challenges to contracts and thus possibly impact on their ability to compete with pipelines. This effect would appear to be mitigated however, by the large and growing number of existing contracts which cannot be abrogated in the future, even if car demand rises significantly. Additionally, railroads serve many more points than a pipeline will or can, and, therefore, should be in a position to offer different services and, compete on the basis of mine-to-destination service under both contract and tariff rates.

I believe that coal pipeline legislation could and should address the issue of a pipeline's common carrier obligation, if for no other reason than, as pointed out in my testimony, to avoid needless litigation. The nature of pipeline operations may well preclude the application of a common carrier obligation in its usual sense. Thus, a bill which squarely faces this issue, and which includes a clear contract provision, would be useful.

In this regard, you may be interested in the approach followed recently by the House Committee on Public Works and Transportation. After marking up H.R. 1010, the "Coal Pipeline Act of 1983," the Committee reported out a bill which specifically addresses this matter.

The bill contains, among other things, specific notice provisions. These provisions require a notice to indicate that any person interested in using the pipeline is to notify the applicant and the ICC. Such a person thereby becomes an "original supporter" and has the right to contract with the applicant for the volume of coal which the orginal supporter requested in the certification process, unless transportation of such coal is not compatible with the pipeline. The original supporter may file a complaint with the Commission if no such contract is entered into, and the Commission may order the carrier to provide the transportation.

This approach is intended to ensure fair treatment to potential shippers on a nondiscriminatory basis. In addition, it would alert rail carriers to the possibility of a coal pipeline, thereby allowing them to compete for the coal traffic at issue by reducing rates and/or entering into contracts. Also, the House bill recognizes the dichotomy between common and contract carriers by, in effect, treating applicants as common carriers before pipeline operations are commenced, and as contract carriers thereafter.

Finally, we note that both the House bill and S. 267 contain provisions somewhat analogous to a common carrier obligation. These provisions, although differing in detail, would require generally that pipelines offer to make available to small and

independent coal producers the lesser of 10 percent of capacity or the portion needed to meet the demand of such producers. This set-aside requirement has some similarity to the railroads' common carrier obligation, but with a specifically identified percentage limitation on the obligation.

Question.—Would you please comment on the effect of the Staggers Act on rail coal rates, particularly as compared to rail rates for other commodities? Specifically, how do post-Staggers rates compare with pre-Staggers rates?

Answer. The Commission does not collect rail rate information on a commodity-by-commodity basis. In order to provide a specific answer, coal rate data would have to be acquired from a sampling of all carrier waybills for each coal movement for pre- and post-Staggers Act periods. Waybills, which are not sent to the Commission, contain: (1) billed tonnage; (2) revenues; and (3) point of origin and destination (from which mileage can be derived). From this data, a rate per ton-mile could be computed for the periods involved. If this data were available, the comparison you suggest could made. In its absence, however, we can resort to other data and methods to make a comparison.

The Department of Labor's Bureau of Labor Statistics (BLS) prepares a monthly price index for all railroad commodity classifications, including coal. From this data, an estimate of the percentage increase in the rates of 10 of the Class I railroad industry's major commodities for the two years before and two years after passage of the Staggers Act can be derived. The BLS Index is based on a 1976 sample of waybills. At that time, the Commission conducted a 1-percent waybill sample from which BLS selected 500 waybills representing all commodities to compute its rail index. Subsequent to 1976, BLS examined the same 500 movements each year, keeping everything constant but revenues, and adjusted its price index accordingly. One drawback is that the BLS Price Index does not reflect the recent substantial increase in long-haul western coal movements. However, subject to this caveat, we have shown, in the following table, estimates of freight rate increases during the two years before and after passage of the Staggers Act, based on the BLS data.

This table indicates that the price indices for all of the commodities shown have been increasing at a decreasing rate during the period following passage of the Staggers Rail Act. Total railroad freight rates rose 33.5 percent between 1978 and 1980 and rose 23.5 percent between 1980 and 1982. Coal rail rates increased similarly, 34.2 percent between 1978 and 1980 and 25.8 percent between 1980 and 1982.

However, the beginning of a recession and increased competition due to regulatory reform of the motor carrier industry occurred in 1980, both of which served to limit railroad price increases. Thus, we cannot quantify the effect that the Staggers Rail Act may have had on railroad rates.

PRICE INDEX FOR RAILROAD FREIGHT

[1969=100]

	1978 [1]	1980 [1 2]	1982 [1]	Percent increase 1980 compared to 1978	Percent increase 1982 compared to
Coal	228.2	306.3	385.2	34.2	25.8
Chemical or allied products	208.5	274.3	340.1	31.6	24.0
Pulp, paper, or allied products	197.1	264.8	326.9	34.3	23.4
Farm products	204.9	275.6	337.2	34.5	22.4
Transportation equipment	217.6	281.9	326.4	29.5	15.8
Food products	210.1	283.1	353.2	34.7	24.8
Clay, concrete, glass or stone products	223.4	301.8	379.5	35.1	25.7
Metallic ores	227.3	307.9	387.3	35.5	25.8
Primary metal products	217.9	284.3	345.5	30.5	21.5
Wood or lumber products	205.7	278.1	350.7	35.2	26.1
Total rail freight	213.1	284.5	351.4	33.5	23.5

[1] Represents annual average index for these years.
[2] Staggers Rail Act of 1980 was passed October 1980.

Note: Price index is based on a 1976 sample of 500 waybills and does not reflect an increase in western coal movements, contract coal rates, or changes in tonnage on waybills.

Question.—You have discussed the role of the Interstate Commerce Commission in the regulation of coal slurry pipelines. What impact would this regulation have on

the rates associated with coal movement by pipeline, and on the ultimate cost to the consumer? How would the Commission regulation relate to any regulatory authority which the state public service commissions might have over pipeline arrangements?

Answer.—It is very difficult, if not impossible, to predict what impact ICC regulation would have on rates associated with coal movement by pipeline, and on the ultimate cost to the consumer. As indicated in response to another question, however, the emergence of an additional competitive mode should itself have a beneficial effect on coal rates, whether moving by pipeline or rail.

Under existing law, pipeline rates must be reasonable and non-discriminatory. [49 U.S.C. § 10701 and § 10741.] In any individual proceeding involving a challenge to pipeline rates, we would have to determine the reasonableness of the rate in issue. We would have to look at, among other things, the costs associated with the movement in making this determination.

However, as pointed out in my testimony of May 5, 1983, most, if not all, movements by coal slurry pipelines will be under contract. The specific provisions of these contracts should be left largely to the discretion of the parties involved. In fact, coal slurry contracts need not, in our view, be subject to any more scrutiny than rail contracts under the Staggers Act.

With regard to the regulatory authority of a state PSC over utilities, as opposed to authority over the transportation itself, I do not believe ICC regulation would interfere with that authority. Section 8 of the Senate bill addresses that issue specifically by providing as follows:

"Nothing in the act shall be construed to require any forms of automatic pass through of, or preempt the ratemaking authority of any State utility regulatory agency with respect to costs related to construction, operation, and maintenance of any interstate coal pipeline distribution system, whether or not such costs have been provided for by contract between a utility and the interstate coal pipeline distribution system operator."

Question.—S. 267, the coal slurry legislation pending in the Senate, requires a finding of national interest prior to the granting of Federal eminent domain for the construction of a coal pipeline. Are the criteria for making this determination sufficient and appropriate? Would you suggest additional criteria, and if so, how should they be weighted?

Answer.—As mentioned in my prepared statement, we do not believe it is necessary to change the current statutory scheme under which no ICC certificate of public convenience and necessity is needed for a coal slurry pipeline to commence operations. Our position is that the public interest and competition are best served by imposing as few restrictions as possible on regulated carriers, including coal slurry pipelines. Nonetheless, I can appreciate that, when contemplating a grant of the significant Federal power of eminent domain to private individuals, Congress may deem some entry standards appropriate.

In general, I believe the standards set forth in S. 267 are adequate to protect the public interest. Of course, how those standards are interpreted will be the crucial issue. In this regard, as mentioned in my statement, we believe the ICC is the appropriate agency to make the required findings, since transportation issues will have to be considered in the process proposed for granting eminent domain to coal pipelines.

Question.—The Administration has indicated its opposition to the granting of Federal eminent domain authority for interstate coal pipelines. Does this position inhibit or preclude the construction of coal pipelines? Are there legislative remedies available to promote competition between rail carriers and coal pipelines without granting Federal eminent domain?

Answer.—To the extent that Administration support is necessary to facilitate the enactment of legislation granting coal pipelines the opportunity to acquire the right of Federal eminent domain, Administration opposition may inhibit the construction of coal pipelines. However, this lack of support does not preclude the construction of such pipelines; it is my understanding that the ETSI pipeline has already acquired the vast majority of the rights-of-way it needs to construct the coal slurry pipeline it has planned. While this was accomplished without the benefit of Federal eminent domain, it required significant time and expense by ETSI. It appears, therefore, that the lack of Federal eminent domain authority will not necessarily preclude the development of coal slurry pipelines, but it could inhibit their construction.

There is a fairly simple way to encourage the construction of coal slurry pipelines without granting Federal eminent domain powers. This could be accomplished by amending 49 U.S.C. § 10901(d)(1) to add the words "or where a coal pipeline seeks to construct or extend a pipeline" immediately after "railroad line," and by striking "no other rail carrier" and inserting in lieu thereof "no rail carrier." This would

remove a major impediment to the construction of coal pipelines—the refusal of certain rail carriers to allow pipeline carriers to acquire rights-of-way across the rail carrier's property. Of course, other property owners along the proposed route of the pipeline could still resist acquisition of rights-of-way across their property.

Question.—The Staggers Rail Act was premised on a national interest in having a strong and viable rail system in the private sector. S. 267 is based on a national interest in having a competitive mode to the railroads for transporting coal. Are these two goals compatible, as S. 267 is currently written?

Answer.—I believe these goals are compatible. Although one of the goals of the Staggers Act was to achieve a strong and reliable rail system, the fundamental purpose was to allow rail carriers more freedom to compete by reducing unnecessary regulation—not to isolate them from competition. Although some coal traffic may be diverted from rail carriers if coal slurry legislation is enacted, this is by no means a certainty. Rail carriers have the ability to negotiate for that traffic, and to enter into contracts or adjust their rates as the marketplace dictates.

Although coal is the most important single commodity for railroads in terms of revenue, we do not believe that the construction of coal pipelines would result in the demise of our rail system. First, we believe that railroads are capable of competing with pipelines for coal transportation. Second, studies of the economic impact of coal pipelines suggest that, even if all the proposed lines are constructed and operate at full capacity, which is highly unlikely, they would transport only a small percentage of all coal moved in the U.S.

I believe that there will be many situations where railroads provide the best combination of service and rates. However, if a pipeline can be built and provide better service and/or lower rates, it would be in the public interest to allow it to do so. There is no reason to believe that our choice is between all railroads or all pipelines. I believe both modes have a role to play in our national transportation system.

Senator DANFORTH. We have a vote now on the floor and we have another panel after that, so I think we should vote now and then come back.

[Recess.]

Senator DANFORTH. Next we have Mr. George Berg with the American Farm Bureau; Mr. Jim Miller, National Grange; Mr. Robert Mullins, National Farmers Union; Mr. David Senter, American Agriculture Movement; John McCormick, Environmental Policy Institute.

Also, the National Farmers Organization was unable to send a representative this morning, but it has submitted a statement for the record in opposition to the bill, and that statement will be included in the record.

STATEMENTS OF GEORGE BERG, ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION, AMERICAN FARM BUREAU FEDERATION; JIM MILLER, ASSISTANT LEGISLATIVE DIRECTOR, NATIONAL GRANGE; ROBERT J. MULLINS, DIRECTOR OF LEGISLATIVE SERVICES, NATIONAL FARMERS UNION; DAVID SENTER, NATIONAL DIRECTOR, AMERICAN AGRICULTURE MOVEMENT, INC.; AND JOHN McCORMICK, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY INSTITUTE

Mr. BERG. Thank you, Senator. The American Farm Bureau Federation appreciates your invitation to testify on coal slurry pipelines. The Farm Bureau is the Nation's largest general farm organization, representing more than 3 million member families in 48 States and Puerto Rico.

Farm Bureau policy states:

Federal legislation dealing with coal slurry pipelines should (1) respect State water laws; (2) respect State laws concerning property rights and eminent domain procedures; (3) require payments to owners for damages done to their property; and (4) provide that a State which has a water compact with another State shall receive

credit for the amount of water that is transported to the other State in an coal slurry pipeline.

Mr. Chairman, in addition to the Federal legislation which has been introduced in both the House and Senate, there have been extensive State legislative proceedings on the coal slurry question. Several State legislatures have rejected coal slurry eminent domain proposals. Other States have passed coal slurry legislation which restricts and heavily regulates any coal slurry activity within the particular State.

As indicated by our policy, Farm Bureau is concerned about the water resources of the country and the stability that water provides agriculture. Nearly one-half of the substance carried in coal slurry pipelines is water. It is estimated that moving 1 ton of coal in a pipeline would take 1 ton of water, or 250 gallons. On this basis, one coal slurry pipeline could consume as much as 6 billion gallons of water per year—an amount equivalent to the water needs of a town of about 65,000 people.

There is ample legislation at the Federal level dealing with the allocation of surface water, the rivers, the lakes and the streams. There is little protection, however, for our underground water resources, which provide much of the usable water for cities, towns, farms, and ranches throughout the country. Coal slurry systems might use much of that underground water as a means of transportation in coal slurry pipelines. This is why Farm Bureau is concerned that any Federal legislation dealing with coal slurry pipelines must respect State water laws.

Coal slurry development will obviously impact agricultural interests in a number of ways. Some agricultural land and water will be taken for pipeline construction and operation. Transportation rates for agricultural commodities could be increased to offset the loss of coal hauled by the railroads. Water prices will also be increased as a result of coal slurry operations and this will ultimately increase operating expenses for an already hard-pressed agricultural economy.

Granting Federal eminent domain authority to coal slurry developers will disrupt thousands of acres of land across thousands of miles now being used for agriculture. We urge that any legislation approved by the Congress respect our State laws concerning property rights that are taken by means of eminent domain procedures. We further urge that legislation provide adequate compensation to owners for damages done to their property.

As far as water compacts between the States are concerned, we believe that every effort must be made to insure protection to individual States without the necessity of the States resorting to costly litigation. Legislation could be enacted that would provide a credit to one State for the water that is transported to another State.

Many questions exist with regard to our water policies, such as ownership, claims, entitlements, and the situations where States share water sources. These questions must be resolved before Congress enacts any coal slurry pipeline legislation.

Water and the lack thereof is one of the most serious long-range problems facing our Nation, perhaps even more serious than the energy crisis. Congress must recognize the need to balance all the

issues involved to insure that a State which has a water compact with another State is fully protected.

We appreciate the opportunity to present the Farm Bureau's views on the question of coal slurry pipelines.

Senator DANFORTH. Thank you, sir.

Mr. Miller.

Mr. MILLER. Thank you, sir. I appreciate the opportunity to appear here today and I appreciate the invitation to present our views. The National Grange represents about 425,000 members in 41 States. Our members are principally small- and medium-scale operators, family and family-operated enterprises.

The Grange would like to submit to this committee simply this, that agriculture would be the first industry affected in the event coal slurry pipelines are granted eminent domain authority. Agriculture would also be the hardest hit, and it would perhaps be the only economic segment that must absorb the highest portion of increased costs of transportation.

The Grange has several concerns. Let me briefly go through those. We are extremely concerned about the availability of water supplies, recognizing that the bulk of the low sulfur coal will probably first anyway be extracted from Western areas of the country, and we recognize that this is also the area where the most severe water shortages occur.

Second, the question of eminent domain. I think something has to be pointed out that has not been pointed out to this committee yet, and that is, in spite of the fact that farmers and landowners would be compensated for that eminent domain right-of-way, it ought to be understood that there are a lot of costs associated with having to deal with an easement through their property—the cost of time and aggravation of trying to arrive at a fair price for the easement. That failing, there are costs associated with legal proceedings to settle the dispute.

During construction, the farmer must deal with the inconvenience of workers and equipment that disrupt normal farming operations. It is evident from our members' previous experience that a lot of damage occurs that cannot be taken into consideration when trying to arrive at a price for the easement itself—such things as damaged crops that were not anticipated, for instance, by large vehicles and large construction operations.

There is also the problems that occur after the construction has been completed that normal maintenance and operation processes bring about, particularly, such mundane things as fences being cut or gates being left open. These create an incredible annoyance and burden that farms must face as times go on.

Of course, we are extremely concerned about the transportation costs that we anticipate will be associated if coal slurry pipelines do become a general means of transporting coal. I think the arguments that have been presented here to counter this argument by those slurry proponents are a little bit troublesome insofar as we recognize that railroads are not subsidizing our grain transportation, and I think the realistic presumption ought to be that they probably are charging us everything that they think they can.

But the fact is they are not in business to keep farmers in business either, and if they suffer a severe erosion in their profits from

the transport of coal, we can only assume that those upper limits of what they can charge farmers for the transportation of their grain and commodities will be taxed at just the absolute highest limits that can possibly be charged. They are going to try, I think, to raise those rates just to see how far they can.

I think it is obvious to the agricultural community that if industry does suffer severe erosion of their profits that we will be required to help make up that difference.

The Grange today and over the years has had significant differences with railroads. We object to the provision of the Staggers Act that permits railroads to sever the profits of their holding companies from those associated with the transportation industry enterprises.

This has permitted railroads to expand their empires at enormous costs, while abandoning lines based on destitution, and it does not seem appropriate to us that this practice should be allowed to continue.

In summary, agriculture stands to lose big if Congress grants eminent domain authority for slurry lines. It will be agriculture's water that moves the coal. It will be farmers' and ranchers' land across which the lines and the traffic will run, and it will be agriculture that will bear the costs if slurry lines assume the bulk of the coal transportation business. Agriculture will pay the cost and gain none of the benefits, if any in fact do exist.

Thank you for the opportunity to speak.

[The statement follows:]

STATEMENT OF JAMES MILLER, ASSISTANT LEGISLATIVE DIRECTOR, THE NATIONAL GRANGE

Chairman Danforth and members of the committee; I am James Miller, assistant legislative director of the National Grange. Our offices are at 1616 H Street, N.W., Washington, D.C. I appreciate the opportunity to appear before this subcommittee to express our views on the issues of coal slurry pipelines. Despite efforts by some who would portray this issue as a clear and undeniable means of enhancing competition in the coal transportation business, coal slurry pipelines present a clear danger to many segments of the economy of the United States. Agriculture is one such segment of the economy that will be affected if slurry lines proliferate and draw business away from the railroads. I submit to this committee that, indeed, agriculture will be the first industry affected, it will be the hardest hit, and it will be perhaps the only economic segment that must absorb the highest portion of increased costs of transportation.

Let me briefly explain some of the reasons we oppose slurry lines that are not directly related to transportation costs. Clearly, water availability is a serious concern to us. In areas of the West, where water supplies are always a problem, it is inconceivable to our members that Congress would seriously entertain the idea of using such a precious resource to mix with coal in order to get it from one place to another. Indeed, I find that difficult to comprehend as well. Slurry proponents state that their lines will use less water than a steam generated electrical plan, yet it is obvious that steam generation is quite necessary in many places, and it is not something that can be done differently with our available technology. The question, however, remains: why use more water than is necessary in the process. We've yet to hear our slurry friends answer it.

Then there is the question of eminent domain. Someone once asked me why farmers do not like eminent domain. After all, he asked, don't they get paid for the right-of-way? Any farmer or rancher who has had experience in dealing with rights-of-way will tell you that they cost rather than pay. First there are costs of time and aggravation trying to arrive at a fair price for the encasement. That falling, there are costs associated with legal proceedings to settle the dispute. During construction, the farmer or rancher must deal with the inconvenience of workers and equipment that disrupt normal farming operations. It is surprising how many utility

workers need an acre of ground to turn a pickup around. Or equally surprising is the challenge to a constuction worker that a drive across a pasture can present. Beneath every tree along the way will be signs of lunch breaks to short to allow time to pick up the garbage. And for the farmer, the problems have just begun. Fences will be cut or gates left unclosed. Culverts and ditches will be flattened by maintenance vehicles, and the trash and inconvenience will be as permanent as the pipe itself.

But this hearing is to examine the transportation issues involved with coal slurry pipelines. Testimony before this subcommittee last year from Federal Railway Administrator Robert Blanchette indicated that the probable result will be significantly higher rail rates for agriculture. Slurry proponents do not believe that coal rates are used to subsidize rates for agricultural commodities. I have never heard that claim made by anyone. As businessmen, they surely realize that the economic health of the rail system is determined by the health of the sectors that comprise it. When coal and grain are hauled on the same track and both are making money, it makes no sense to either abandon the line or allow it to deteriorate and jeopardize future business. Nor does it make sense to abandon a line that shows only marginal profitability if that limited profit can be compensated by other well-paying lines. Representatives of railroad interests are much more capable of making their case than I. But it is obvious to the agricultural community that if an industry upon which we depend so heavily experiences a revenue loss, we can be assured that we will be required to help make up the shortfall. It is that prospect, regardless of the cause, that concerns me.

The Grange, today and over the years, has had differences with the railroads. We object to the provision of the Staggers Act that permits railroads to sever the profits of their holding companies with those associated with the transportation end of the enterprises. This has permitted railroads to expand their empires at enormous costs while abandoning lines based on destitution. In this respect, we agree with the slurry proponents that railroads can hardly prove indigence based on the contents of one pocket while the other pockets bulge. But these are the rules under which railroad users are forced to operate. These rules govern the delivery of agricultural imputs to the rural areas, and they govern the movement of the farm and ranch products to the processor and markets.

The issue of rail transportation costs on agriculture should be accompanied by a brief discussion of alternative modes. Parts of the country served by inland waterways are faced with the possiblity that user fees will be imposed or raised to cover operation and maintenance of locks, dams, ports, and channel dredging. For agricultural commodities, any increase in user fees will be borne by the producer thus lowering his or her net profit per bushel sold. Competitive rail or truck lines will then be able to raise their rates.

Last year Congress raised the heavy truck taxes, also a user fee. This, in turn, made trucking less competitive in those areas where distances permitted a farmer to choose between trucks and some other mode. (It should be noted that long-haul trucking of bulk commodities such as grains is seldom competitive with other long-haul transportation modes. This is primarily true regarding goods destined for export which originated in inland states.)

As higher truck taxes and waterway user fees become a reality, agricultural producers will feel their effects directly. By placing the rails in a situation where they are forced to raise their rates, any previous semblence of competition for lower transportation costs become nonexistent. This lends to my next point. All the talk about increased competition that slurry lines will create must be viewed as highly selective. First, the only competition to be realized will be in one single bulk commodity—coal. And then only a few coal mines will enjoy that competition. If slurry lines proliferate and become the principal mode of transportation for coal, the lines will "compete" only among themselves, and it is here where the so-called " take or pay" contracts will guide coal tansportation rates. Competition among versatile transportation modes will not have been aided one iota. Is that sound public policy? The Grange thinks it is not.

In summary, agriculture stands to lose big if Congress grants eminent domain authority for slurry lines. It will be agriculture's water that moves the coal. It will be farmers' and ranchers' land across which the lines and traffic will run. And it will be agriculture that will bear the costs if slurry lines assume the bulk of the coal transportation business. Agriculture will pay the costs and gain none of the benefits, if any exist.

Thank you for this opportunity to testify, and I will be happy to answer any questions of the committee.

Senator DANFORTH. Thank you.

Mr. Mullins.

Mr. MULLINS. Thank you, Mr. Chairman. On behalf of the Farmers Union I appreciate the opportunity to share some of our concerns with the committee today in regard to the coal slurry pipeline.

First of all, I think you have a unique situation here and that the record should show that for once you have all the major farm organizations in the country in virtual agreement on something, including our colleague from the NFO who is not here. So I think that should say something about the seriousness also of the issue.

I can only associate myself with the remarks of the two previous witnesses. We, too, are concerned about the impact on the financial security, particularly of the Western railroads, and, therefore, their ability to provide service to agricultural shippers in that region.

We believe it is in the national interest to maintain a viable transportation system in this country and particularly as it relates to agriculture, a viable rail transport system. The Congress has seen fit in its wisdom to revitalize or start revitalization of the railroads in this country, and it, in our opinion, would be detrimental for this Congress to act in any way that would jeopardize or weaken that rail transportation system.

I share the concerns of my colleagues over water utilization, particularly in the Western and Northern plains regions of the country. Water there is a scarce commodity. Most of it has already been allocated. If we are to have a viable agriculture, if we are to develop alternative energy sources, if we are to have any sort of industrial development in that region, they all require water, and we are concerned about the impact on existing water laws that this legislation would have.

We are very concerned with the impact on land use. Mr. Miller has already alluded to that, and I cannot add much except that farmers over the years have been severely impacted by the use of eminent domain authority, whether it be on the State level or the Federal level. We have seen land taken for construction of highways, rail, barge lines, utility lines, defense installations, and airports. It is our opinion that the use of such authority should be judicious so as not to excessively condemn farm and ranch lands.

I would like to remind the committee that in the 1981 farm bill the Congress included a provision which directed Federal agencies to be cognizant of the impact that their policies and actions have on land use, and I think it would be wise for the committee to take notice of that provision.

Mr. Chairman, you have my prepared statement. At this point I will conclude.

[The statement follows:]

STATEMENT OF ROBERT J. MULLINS, DIRECTOR OF LEGISLATIVE SERVICES, NATIONAL FARMERS UNION

Mr. Chairman and Members of the Subcommittee, I am Robert J. Mullins, Director of Legislative Services for the National Farmers Union, a general farm organization representing the interests of family farmers and ranchers. I appreciate the opportunity to raise with this Subcommitte some of the concerns of the Farmers Union in regard to coal slurry pipeline legislation and some of the impacts on agriculture of constructing those pipelines.

Our major concerns focus on four issues: (1) water utilization, (2) land use policy, (3) eminent domain, and (4) rail transportation.

WATER

Water is the key to prosperity and development in the western regions of the United States. Agriculture, energy, development, maintenance of natural resources and recreation areas all demand a reliable and stable supply of water. Agriculture, in particular, plays a vital role in the economy of the regions which would be most severly impacted by the construction of coal slurry pipelines. Cognizant of the importance of water to agriculture and the future economic health of the region, and the nation, the delegates to the most recent National Farmers Union convention held February 27—March 2, 1983, in San Diego, California, adopted the following statement in regard to water and coal slurry pipelines:

"We oppose the movement of any water for the purpose of a coal slurry pipeline or similar venture, unless a method can be developed to return equal quality and equal quantity of water to the original areas from which it is taken.

"Prior to the exportation of any water, an environmental and economic impact statement must be made to determine the effect on agriculture."

Furthermore, the members of the National Farmers Union said:

"Because of the vital role of water and its importance to agriculture, we believe it is necessary to establish sound water policy.

"Water policy is inseparable from energy and agricultural policy. We urge adoption of the following order of preference in water use: (a) Domestic and municipal consumption; (b) Farming, including groundwater recharge; (c) Hydroelectric uses; (d) Navigation; (e) Industrial consumption; and (f) Wildlife and recreation."

LAND

Another issue that is of concern to us is the impact that the construction of such pipelines will have on agricultural lands. In recent years, farmers and ranchers have been engaged in a series of confrontations and disputes with power companies and pipeline operators over the construction of such facilities acrosss their lands. Disruption of normal farming and ranching operations should occur only when there is an overwhelming proven public need. We do not believe that such "overwhelming public need" has been demonstrated by the proponents of these projects.

With the continuing diversion of agricultural land from productive uses, we do not believe that federal policy should exacerbate or promote this trend. I will remind the Committee that in the 1981 Farm Bill the Congress directed federal agencies to minimize the extent to which they, through their policies and actions, contribute to unnecessary farmland conversion. The Congress itself should pay heed to this admonition.

EMINENT DOMAIN

We also question the appropriateness and advisability of granting federal eminent domain power to private developers. Although there is precedent for the granting of such power (the nation's natural gas pipeline system was constructed with the use of federal eminent domain authority) again, we believe that granting such authority should be done only in situations which directly impact on the security or economic well-being of the country. We do not believe this to be the case with the construction of coal slurry pipelines.

Over the years, agriculture has been disproportionately impacted by the use of eminent domain authority, both federal and state, as land has been taken for the construction of highways, rail and barge transportation, utility lines, pipelines, airports and defense installations. The use of such authority must be judicious so as not to excessively condemn farm and ranch land.

RAILROADS

Finally, we are concerned with the effect that the construction of coal slurry pipelines will have on the financial security of western railroads and, therefore, on their ability to provide service to agricultural shippers in areas where they would otherwise lose a significant portion of the coal transportation market. Again, our delegates were acutely aware of the implications for farmers of any further decline in rail service:

"America's railroads and the country's entire transportation system are in a state of crisis. Several railroads important to farmers are in financial trouble, and several key grain-producing areas are experiencing a decline in rail service.

"The fact is that today our nation cannot move its food efficiently and we lack the ability to be a reliable exporter of food and fiber because of the inadequacy of our transportation system. Railroads, for much of the country, are the most efficient way to move heavy commodities, such as grains.

"We must remember that with the dramatic world population growth forecast for the future, demand for food and fiber products will continue to increase. American farmers and their products will become even more important. That is the strongest argument for a reliable and modern transportation system for the world's greatest food and fiber producer."

As stated above, we believe that it is in the national interest to maintain a strong reliable transportation system, particularly a strong and viable rail system. Therefore, we would oppose any actions by the Congress which would, in the long run, weaken or jeopardize such a rail transportation system.

CONCLUSION

There are, of course, many other areas of concern that must be taken into account when considering the effects of contruction of slurry pipelines, many of which cannot be measured from a cost/benefit standpoint. There are social implications, employment concerns, and environmental impacts; concerns which will vary with one's particular perspective, but all legitimate.

The Farmers Union does not believe that passage of this legislation, at this time, would be in the best interest of farmers, consumers or our transportation system.

Senator DANFORTH. Thank you, Mr. Mullins.

Mr. Senter.

Mr. SENTER. Mr. Chairman, we appreciate the opportunity to appear before this committee. I would like to say at the beginning that we are not here to take sides with railroads against coal slurry, but we are here to talk about the coal slurry issue because it is much broader than just a railroad verses slurry issue. It is a genuine farm issue as well.

The American Agriculture Movement is opposed to coal slurry. We feel like that this bill would create a Federal eminent domain for a private entity. Someone, somewhere would be empowered to approve routes for the slurry construction across fields, forests, highways, neighborhoods or wherever.

It is a very important water issue, as has been mentioned earlier. Someone also would be delegating to decide how to use scarce, precious supplies of water during a drought. Can you imagine the dilemma of deciding whether to use the water available to irrigate crops, go to a public reservoir, or move coal to some distant location to generate electricity? We feel like this would be the first step in taking water rights from individuals and States and transferring them to the Federal Government.

Second, we see no firm evidence of what we can do with that water once it is used, and we are very concerned about the quality.

We are very concerned about agricultural transportation. We feel like building some of the pipeline could very well lead to a domino effect that would affect the rail transportation of farm commodities. With less coal, railroads ultimately would have to charge more for shipping farm products. Marginal branch lines would be abandoned and we would see many more farmers without rail transportation for their commodities.

We do not want to see any more Rock Islands. We have thousands of farmers all along that line now having to ship their grain by truck because rail transportation is gone and they are feeling the economic pinch from doing so.

We have seen no evidence. There has been a lot of talk about if we use the pipelines electric rates will go down. We farmers find very few things that we purchase ever go down, and we have seen no proof that cheaper transportation would ever be passed on to the consumers of electricity.

But one thing we know. Food costs would go up if railroads suffer, if agricultural transportation charges increase. The consumers and everybody that buys food will ultimately pay more for their transportation.

In closing, just briefly we are opposed to the coal slurry because of Federal eminent domain, our private property rights, water rights, and also our agricultural transportation. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF DAVID SENTER, NATIONAL DIRECTOR, AMERICAN AGRICULTURE MOVEMENT, INC.

Mr. Chairman, and members of the Subcommittee on Surface Transportation of the Senate Commerce Committee:

My name is David Senter, and I greatly appreciate your affording me this opportunity to present to you, as National Director of the American Agriculture Movement, the views of my organization against S. 267, a bill to grant federal eminent domain authority for the construction of coal slurry pipelines.

These views are shared, to the best of my knowledge, by all other general farm and commodity groups which have taken a position on coal slurry. Agricultural interests uniformly and unanimously oppose coal slurry.

Those of you familiar with agriculture did not have to read Seth King's column in the New York Times last Sunday to know that, as he stated, the current farm recession is the worst since the 1930's. Last year, for the third straight year, our production costs exceeded the prices we were paid.

Accompanying Mr. King's column was a chart showing how farming has changed in this century. According to statistics from the U.S. Department of Agriculture, during the sixties and seventies, the number of farms in the United States dropped 1.53 million, almost 40 percent. At the same time, 134,000,000 acres were taken out of agricultural production. That loss was at a rate of 765 acres per hour for 20 years.

As farms and agricultural acreage are being reduced, the farms that remain are becoming more efficient and somewhat larger. We are still beset at every turn with horrendous interest rates, with sharply fluctuating land values, with rampant inflation one year and with unmanageable surpluses the next. We must contend with killing frosts, devastating droughts, ruinous floods, tornadoes, earthquakes and other factors over which we have little or no control.

We can't control the weather, which can make or break us. We can't control the Federal Reserve System and the Wall Street bankers who manipulate interest rates.

We can do nothing about the practices of speculators in commodities. We must buy retail and sell wholesale, with no recourse.

All farmers can do, very frankly, is to try to do the best we can in the face of many uncontrollable forces in the atmosphere, in the marketplace, and in government.

Thankfully, we still have some degree of control over the land we own and lease and over the water we use.

S. 267 threatens the control we have over our land and our water.

It passage would usurp the eminent domain powers vested with the states. It would run roughshod over a state's decisionmaking authority with respect to water. Inter-basin transfer of water, now rare and illegal in most states, would likely become commonplace.

Apparently some agency here in Washington would be empowered to approve or disapprove the routes for the 100-foot-wide cuts that would have to be made for hundreds and, in some cases, for thousands of miles across fields and forests, highways and neighborhoods, so these monstrous pipelines could be built.

Some bureaucrat would likely be delegated to decide how to allocate scarce, precious supplies of water during drought. He and she would play God. Can you imagine the dilemma of deciding whether limited amounts of water will be used for irrigating crops, or for public reservoirs, or for moving coal into some far distant area

so electricity can be generated? The bureaucrat would have nothing to fall back on. Railroads would have long since pulled out. They will have no incentive to keep and maintain their trackage once coal shipments switch from rail to slurry.

The sketchy information that is available about coal slurry pipelines is most troublesome of those of us who own and lease the vast majority of land that will be taken to build the pipelines.

We are outraged that our private lands, now being used to produce food and fiber, will be taken by private entities to build a transportation mode that is not necessary and that will be redundant. Coal slurry pipelines will not promote the defense of United States. Nor are they overwhelmingly in the national interest. Our understanding of eminent domain is that it is a power to be exercised at the federal level rarely and only when there is an unavoidable, compelling need. It is preposterous to us that this legislation, which so grossly violates the principles of states rights and federalism, is even being considered.

All farmers whose land and water supplies will be adversely affected by the pipelines want answers to these questions:

1. Will it be possible for trees and other vegetation to be planted and cultivated on top of the land taken for the pipelines?
2. Will the owners of the pipelines be adequately insured to compensate us for damage resulting from spills and leaks?
3. What are the safeguards against spills and leaks?
4. What recourse will farmers have if they are not satisfied with the compensation offered by pipeline builders?
5. Will landowners be paid one lump sum, or will they receive an annual lease payment?
6. How much water will be consumed and contaminated by the pipelines?
7. Will that water be recycled, or de-contaminated, or dumped into an ocean, or pumped into an unsightly waste pond?
8. Will the land needed for coal slurry waste ponds also be subject to being taken by eminent domain?
9. How much agricultural acreage will be taken out of production by the pipelines?
10. Has anyone begun to assess the adverse consequences of losing substantial amounts of cropland, forests and pasture land so the pipelines can be built.
11. What impact will allocating billions of dollars to build the pipelines have on our capital markets?
12. If scarce capital goes for the slurry pipelines, will there be further delays in repairing the highways and bridges farmers need to get crops to market?
13. How many highways will the pipelines cross?
14. How long will traffic have to be detoured so a pipeline can be built underneath a highway?
15. In times of drought, how will scarce water supplies be allocated?
16. If federal eminent domain authority is granted for this flimsy purpose, for what even more flimsy purpose will it be granted five years or ten years from now to take even more acreage out of production?
17. One interbasin transfer of water is permitted on a massive scale by 12 or 13 coal slurry pipelines, will the Pandora's Box be opened for raiding any water basin anywhere in the United States?

Those of us from Texas and from New Mexico, Colorado, Oklahoma, Nebraska and Kansas are acutely aware of how the water table in some parts of the Ogalalla Aquifer has steadily dropped for a number of years. The depletion of the Ogalalla is serious, and it will, in all likelihood, require attention and action by Congress.

If one or more of the 13 coal slurry pipelines should begin depleting the Ogalalla or some other aquifer, would it be possible through congressional action or court order to stop that depletion?

Finally, I urge you to consider the domino effect that building coal slurry pipelines will have on the rail transportation of farm products. The revenues the railroads receive from moving tremendous volumes of coal contribute mightily to the strength and financial well-being of the rail industry. With coal, railroads can be on a solid footing and better able to serve agriculture. With substantially less coal, railroads will certainly have to charge more to ship farm products, and those increased costs will be passed on to supermarket customers.

Additionally, marginally profitable branch lines in rural areas will be subject to abandonment.

Agriculture has already borne the brunt of too many bankrupt railroads—the Rock Island, the Milwaukee Road, the Delware and Hudson, and others.

For agriculture to be strong and healthy, the railroads must be strong and healthy.

Agriculture's dependence on the railroads is rivaled or exceeded only by the coal industry. The total is staggering when you add up all the farm-related commodities that move by rail—grain, grain mill products, other farm products, food and kindred products, primary forest products, lumber and wood products, pulp, paper, and the fertilizer, chemicals and petroleum we use.

In all likelihood, as more coal slurry pipelines are built and put the squeeze on railroads, a steadily increasing percentage of farm-related commodities now being shipped by rail will have to move by highway or by barge. I cannot believe any of you will knowingly take any action that would further aggravate the existing problems of moving freight by trucks and barge lines.

Until the questions I have raised can be fully and satisfactorily answered, you may be assured that the nation's agricultural sector remains strongly opposed to S. 267.

Coal slurry pipelines, at first blush, have much the same exotic, high-technology lure that the SST had more than a decade ago. Congress wisely killed the SST, and S. 267 deserves the same treatment.

Thank you.

Senator DANFORTH. Thank you, sir.

Mr. McCormick.

Mr. MCCORMICK. Mr. Chairman, I want to thank you for the opportunity to testify with this distinguished panel. It is not often that an environmental organization can be in the company of all of the major farm groups and, as they are in agreement, we are in agreement with them.

Mr. Chairman, I represent the Environmental Policy Center, and on this issue we have testified some 13 times since 1974. From its earliest round some 10 years ago, this legislative battle has been driven by the insistence by the pipeline proponents that railroads pose an impenetrable barrier to their construction.

On its face, this argument cannot stand up with regard to the Energy Transportation Systems or the ETSI pipeline proposal stretching from Wyoming to Arkansas to Louisiana. That project is proceeding regardless of the outcome of this legislation.

Furthermore, the pipeline sponsors have successfully challenged railroads in 65 of 66 court cases to yield easement for the pipelines right-of-away. Thus, ETSI has no grounds for pressuring for enactment of this bill, unless, of course, railroads are not the primary target of this bill's intent.

This appears to be a suspicion we share with the Energy Secretary, Donald Hodel. In an interview in the Energy Daily he was quoted as saying:

I thought I was reliably informed that their main concern was the railroads' objection to their acquiring rights of way. An alternative would be a piece of legislation that said "you have the right to condemn a right of way over interstate commerce enterprises," which would include railroads. So when this proposal was presented I found there was a lot less enthusiasm for it among the coal people than I had been led to believe, which led me to believe that I'd been misled in the first place as to what their real intentions were.

And in the interview he went on to say that he now sees their intention as more sweeping. They want legislation which would give them the right to condemn farmland and other properties which are the domain of States, and, in his words, that is an anathema to the administration.

Now we agree with the Secretary and with this distinguished panel of spokesmen. They are the voice this committee and Congress should be listening to, and their message could not be clearer

or more emphatic. They do not want to be pitted against multinational energy and engineering companies by virtue of this legislation's authorizing those companies to seek Federal condemnation of land owned by farmers already burdened by the economic calamities of this prolonged recession.

Now so much has been made of the complex and precarious issue of the protection of States' water rights in this debate. That is not to say that water protection concerns in the arid West do not warrant such meticulous care. Rather, the emphasis upon the water rights question has diverted the attention of the Congress from the equally important need to protect the rights of property owners.

This point was addressed so articulately by David C. Russsll, Deputy Assistant Secretary for Land and Water Resources, when he testified in the previous Congress before the House Interior Committee.

In his statement he said:

> It is ironic that we are making every effort to protect State authority over water while seriously considering diminishing State authority over the disposition of non-Federal lands within their boundaries. Is State authority over land any less worthy of our concern and protection than State authority over water?

Assistant Secretary Russell is speaking for all of us at this witness table this morning and it is time this Congress began to focus on the real victims of this legislation—the agricultural interests residing along proposed coal slurry pipeline routes.

Now, they want and deserve the same deliberate concerns that the House and Senate committees have shown for water rights. Your committee has undisputed jurisdiction in this area and we urge you to seize this issue and resolve it with no less regard than has already been accorded State water laws.

This legislation provokes another irony that should not escape this committee's attention. Simply stated, this bill treats surface owners affected by coal slurry projects as a lower class of citizens than does the Federal coal strip mining law where property owners reside above federally leased coal deposits.

More explicitly, a farmer in Kansas, residing in the path of a proposed coal slurry pipeline originating from a Federal coal deposit in Wyoming may have no protection of his surface rights, whereas his fellow rancher in Wyoming was accorded the rights to protect his surface lands from coal strip mining by virtue of a provision in the Federal coal strip mining law.

I would like to cite that provision, Mr. Chairman. It is in section 714(c), and it states that: "The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent."

Mr. Chairman, let me remind you that was a bitterly disputed issue in the Federal coal surface mining law, but it was adopted by the Congress and it is still in force.

With the enforcment of that provision of the coal strip mining law and the enactment of the coal slurry pipeline law, the Federal Government will be faced with a contradictory set of circumstances where federally leased coal is piped across private lands. The Secretary has to seek permission of the surface owner to mine the coal,

but not seek the permission of the farmer to exercise eminent domain.

Mr. Chairman, I will conclude by saying the granting of Federal eminent domain to coal slurry pipelines is unnecessary and provokes many problems for States at a time in history when the Federal Government is trying to turn many powers and responsibilities to those States. We are just committed to playing an active role in defeating S. 267.

Thank you.

[The statement follows:]

STATEMENT OF JOHN L. MCCORMICK

Mr. Chairman, and members of the subcommittee, it is a pleasure to appear before you this morning to offer the views of the Environmental Policy Center on this legislation. The Center has followed the debate on coal slurry pipelines since the Senate first considered a similar bill, S. 3879, in 1974. Since then, the Center has provided testimony before the Congress on more than thirteen occasions on which this matter was debated.

Throughout the debate, the Center has maintained that coal slurry pipelines may, under certain circumstances, be preferrable to the construction of other modes of coal transportation. One case in point is the presently operating Black Mesa coal slurry pipeline delivering coal from the Black Mesa coal strip mine in North Central Arizona to the Southern California Edison Co.'s 1636 MW coal-fired facility in Bullhead City, Nev., located some 238 miles from the mine. To have constructed a new railroad delivery system between the mine and the plant would have required extensive disruption of the ground surface and vegetation in a region where dry climatic conditions could not assure revegetation of the land.

On a case-by-case basis, a coal slurry pipeline proposal may have merit from the perspective of land disturbance, capital outlay and operation/maintenance costs advantages in those instances where a railroad delivery option is not available. But, it must be mentioned that all proposed coal slurry pipelines under active consideration do have railroad alternatives which service the prospective coal-producing and coal-consuming regions. Where such potential for "cloning" of operating railroad coal delivery systems might occur, the justification for the huge capital drain and environmental impacts associated with construction of a coal pipeline would, in our opinion, pose enough problems as to warrant the rejection of the slurry option.

The arguments surrounding this, and similar, coal slurry pipeline legislation have taken on the quality of folk legends by now. Certainly, this Congress has given ample opportunity for all sides to present their views. Though there is an abundance of less emotionally charged issues, the debate continues to revolve around (a) the granting of federal powers of eminent domain to qualified coal slurry pipelines, and (b) the assurance to Western States' governors that State water laws will be protected. This is not to diminish the possible economic, environmental, labor displacement and consumer abuse concerns voiced throughout the debate. The Center has raised those issues in hearings and markup on numerous occasions and will continue to do so throughout this Congress. However, it is the authority provided in S. 267 to condemn private lands for the purpose of acquiring pipeline right-of-way that I will address in this testimony.

Eminent domain has been defined as the power of the sovereign to take property for public use without the owner's consent upon making just compensation available to the owner. The predominate concept of eminent domain is that it is an inherent power necessary to the very existence of the government. It exists in absolute and unlimited form but there are jurisdictional, constitutional, and statutory limitations upon its use. The federal government can exercise eminent domain powers against State lands but the States cannot exercise such powers against federal lands without the consent of the U.S. government. Two basic limitations upon the use of the powers of eminent domain are that the owner of the condemned land must be paid a just compensation and the power must be exercised for a public purpose.

If a coal pipeline originates in a State wherein the coal is delivered to supply economic goods and services to the Citizens of that State it may be easy to quantify its benefits. It is another matter entirely when a coal pipeline merly traverses the lands of a State without providing any measurable goods or service to that State's economy. Regardless of the impacts of a coal pipeline upon a State for which no benefits derive, the Senate Energy Committee bill authorizes the use of federal con-

demnation powers by the pipeline builders to acquire easement across that State's lands. Furthermore, the bill allows the waiving of State laws where they prevent the construction, maintenance and operation of a coal slurry pipeline having been designated a "project in the national interest" pursuant to section 4 of S. 267.

The findings required by that section are so general as to allow every coal pipeline sponsor to qualify as a national interest project. The test requires that the pipeline promote competition, help meet national distribution needs, contribute to the displacement of imported oil and be no more environmentally destructive than other coal transportation modes. Since some of these findings would be subject to speculation and not judicially reviewable, it appears that the pipeline project has a built-in incentive to take the federal condemnation route instead of private negotiations with land owners.

From its earliest round, some 10 years ago, this legislative battle has been driven by the insistence by the pipeline proponents that railroads pose an impenetrable barrier to their construction. On its face, this argument cannot stand with regard to the Energy Transportation Systems, Inc. (ETSI) pipeline proposal stretching some 1,300 miles from Wyoming to Arkansas. to Louisiana. That project is proceeding regardless of the outcome of this legislation. Furthermore, the pipeline sponsors have successfuly challenged railroads in 65 of 66 court suits to yield easement for the pipeline's right-of-way. Thus, ETSI has no grounds for pressuring the enactment of this bill (unless, of course, railroads are not the primary target of this bill's intent).

This appears to be a suspicion we share with Energy Secretary Donald Hodel. In an interview, published in the Energy Daily, on April 8, 1983, he thought he had been taken for something of a ride by the coal pipeline advocates. He said:

"I thought I was reliably informed that their main concern was the railroads' objection to their acquiring rights of way. An alternative would be a piece of legislation that said 'you have the right to condemn a right of way over interstate commerce enterprises,' which would include railroads. So when this proposal was presented I found there was a lot less enthusiasm for it among the coal people than I had been led to believe, which led me to believe that I'd been misled in the first place as to what their real intentions were."

He went on to say that he now sees their intentions as more sweeping. They want legislation which would give them the right to condemn farmland and other property which are the domain of States, and that is an anathema to the Administration.

We agree with the Secretary and with this distinguished panel of spokesmen for some the most important land-owners caught up in this debate, America's farmers and ranchers. They are the voice this Committee and Congress should be listening to; and their message could not be clearer or more emphatic. They do not want to be pitted against multinational energy and engineering companies by virtue of this legislation authorizing those multibillion dollar companies to seek federal condemnation of land owned by a farmer already burdened by the economic calamities of this prolonged recession.

So much has been made of the complex and precarious issue of the protection of States' water rights in this debate. That is not to say that water protection concerns in the arid Western States do not warrant such meticulous care. Rather, the emphasis upon the water rights question has diverted the attention of the Congress from the equally important need to protect the rights of property owners. This point was addressed so articulately by David C. Russell, Deputy Asst. Secretary for Land and Water Resources at DoI when he testified in the previous Congress on coal slurry. He said:

". . . it is ironic that we are making every effort to protect State authority over water while seriously considering diminishing State authority over the disposition of non-federal lands within their boundaries. Is State authority over land any less worthy of our concern and protection than State authority over water?"

Assistant Secretary Russell is speaking for all of us at this witness table this morning and it is time this Congress began to focus on the real victims of this legislation—the agricultural interests residing along proposed coal slurry pipeline routes. Now, they want and deserve the same deliberate concerns that the House and Senate Committees have shown for water rights. Your Committee has undisputed jurisdiction in this area and we urge you to seize this issue and resolve it with no less regard than has already been accorded State water laws.

This legislation provokes another irony that should not escape this Committee's attention. Simply stated, this bill treats surface owners affected by coal slurry projects as a lower class of citizens than does the federal coal strip mining law where property owners reside above federally leased coal deposits. More explicitly; a farmer in Kansas, residing in the path of a proposed coal slurry pipeline originating from a federal coal deposit in Wyoming may have no protection of his surface

rights; whereas, his fellow-rancher in Wyoming was accorded the rights to protect his surface lands from coal strip mining by virtue of a provision in the federal coal strip mining law.

The "Surface Mining Control and Reclamation Act of 1977" (Public Law 95-87) provides, in section 714(c), that:

"(c) The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary had obtained evidence of such consent. Valid written consent given by any surface owner prior to the enactment of this Act shall be deemed sufficient for the purposes of complying with this section."

With the enforcement of that provision of coal strip mining law and the enactment of the coal slurry pipeline law, the federal government will be faced with a contradictory set of circumstances where federally leased coal is piped across private lands to the electric utility power plant. The Secretary of the Interior is required to seek the permission of the surface owner residing above the coal deposit before he can lease the coal to the utility. But, he then issues a condemnation order against that surface owner's neighbor in order to facilitate the coal's being shipped from the mine to the power plant.

That inequity has always been a part of the coal slurry pipeline debate, but, not until this hearing, has there been an opportunity to bring the full attention of the Congress to this matter. Your providing this panel of agricultural spokesmen and the Environmental Policy Center a forum to set the record straight on the injustice of the coal slurry bill is appreciated by all of us. Perhaps, this hearing will begin to open the debate wide enough to give the Congress a glimpse of the real victims of this legislative proposal.

Again, we do not mean to downplay the priority of other issues represented at this table. Water availability and the critical need to assure the agricultural communities in the West that water rights will be protected are essential components of this debate. Water pollution from the discharge of untreated slurry waste water must be addressed, as well. The concerns of grain shippers who fear the curtailment of rail service to remote grain elevators in the event the railroads are hurt financially by slurry competition deserve careful attention. Small-output coal mine operators are also anticipating the loss of certain coal markets served by slurry pipeline that refuses to allow access to the pipe by utilizing the full capacity of the line to transport coal from its subsidiary coal mine or by refusing to supply coal crushing equipment and feeder lines to small coal mines. Undoubtedly, you have heard additional complaints about the impacts of this legislation.

To return, again, to the immediate issue of condemnation of private lands pursuant to section 4(f) of S. 267, let me offer a prudent solution. This Committee could amend the Interstate Commerce Act to authorize the ICC the granting of easements over common carrier rights-of-way for legitimate alternative modes of transportation. The ICC could make a finding that such guaranteed easement was necessary to complete the project; would not result in significant economic harm to the existing carrier; and, would promote competition. Upon making such findings, the Commission would negotiate the fair market value of the easement and oversee its transfer.

This approach places the issue of competition among transportation systems squarely before a government entity best equipped to make decisions based upon those factors which relate to a sound national transportation policy. The ICC has the technical expertise to assure that all economic interests are protected and that the policy's needs will be addressed beyond the scope of energy policy.

The pipeline project could seek easement across federal lands by exercising rights granted in the Federal Lands Policy Management Act of 1976 (Public Law 94-579). That law authorizes the Secretaries of Interior and Agriculture to grant rights-of-way over public lands and national forest lands (except wilderness areas) for coal slurry pipelines.

The power to use federal condemnation, pursuant to S. 267, to gain easement for slurry pipelines across State and private lands can be used after good-faith negotiations to purchase the easement from the landowner have failed. That would appear to be a conciliatory provision were it not for the fact that the land owner is not in a position to deny easement. He must either take the pipeline company's offer or risk a lengthy and expensive court suit. And, it should be mentioned, that while the federal eminent domain procedure must be in accordance with existing State laws, the bill is very explicit in waiving any State laws that can be used to prevent the construction, operation and maintenance of a pipeline. Thus, the several State laws prohibiting the construction of coal slurry pipelines would be held invalid if S. 267 is enacted.

With regard to the issue of water protection, Mr. Chairman, Western governors are under no illusions that S. 267 provides their States with iron-clad protection of their State water laws. This bill represents a new variable in the tenuous game of Western water law. Recall the *Sporhase* v. *Nebraska* decision which ruled that water is "an article of commerce".

The precedent may have frightening consequences for other Western states which have enacted similar statutes prohibiting export of water. The Nebraska Supreme Court offered this view of water as a commodity:

"The term 'commerce' implies that the commodity must be capable of being reduced to private possession and then exchanged for goods or services of the same or similar value. An analysis of Nebraska case law and statutes demonstrated that Nebraska law has never considered groundwater to be a market item freely transferable for value among private parties, and therefore not an article of commerce."

Using the U.S. Supreme Court finding that water is a commodity, it is likely this slurry legislation will create the pressure to overturn laws similar to that of Nebraska.

Wyoming and Montana require legislative consent for an appropriation of water within the state for a beneficial use outside the state. Utah requires the granting of a permit for interstate use of its water. The Yellowstone River Compact requires unanimous approval of Montana, Wyoming and North Dakota for export of water out of the Yellowstone River basin.

Montana State Representative, John Scully, removed any doubt regarding the impossible task of the Congress to protect their states in this legislation. Testifying before a House Committee in 1979—and 3 years before the *Sporhase* decision he said:

"If you look historically to water in the past, you find that water has not been treated as a commodity. It has not been treated as a transportation medium. It has not been treated as an item of interstate commerce.

With regard to environmental impacts of a coal slurry pipeline, it may be the case that construction of a pipeline will cause less impact upon the land than would construction of a new railroad right-of-way. That is not to say that slurry pipelines are environmentally superior to railroad delivery of coal. Pipelines represent a fixed capacity carrier moving only one commodity in one direction. Whereas, railroads move any and all commodities in all directions with great flexibility in capacity.

One of the more serious environmental impacts of slurry pipeline operation may be the difficulties encountered in the discharge of the slurry wastewater separated from the coal. Not only will the water be supersaturated with fine coal particles, but, heavy metals, trace elements and acid-producing compounds will also be present. Chemical additives used to prevent corrosion in the pipeline and treatment chemicals used to remove fine coal particles from the waste water may require additional treatment which may not be available on a commerical scale such as a 25- to 50-million-ton pipeline project might require. Pipelines of that size will utilize between 7 and 14 billion gallons of water annually. Using highly saline water or treated municipal waste water may pose separate problems for waste water disposal.

The only example of treatment of slurry wastewater can be observed at the Mohave power plant in Bullhead City, Nevada but this offers no assurance that treatment technology is sufficiently developed and available at this time. Instead of treating the contaminated water, it is piped into settling ponds 130 acreas in size and 10 feet deep. Because land costs are low and water evaporation rates so high at the plant site, the utility can afford to expand the settling ponds to accommodate additional water. This treatment scheme has no application in the humid environment of the Southeast.

When questioned about the wastewater treatment technology available to the proposed coal slurry pipeline projects, the sponsors respond that they will design the pipelines to meet any water discharge standards. We hear it this way:

"Let the Environmental Protection Agency set the standards for water discharge our pipeline must operate under. We'll design the pipeline to operate in compliance. Then, we'll build and operate the line. If our treatment technology does not work or is too expensive, we'll come into the E.P.A. and request a variance from those standards. Or, we'll wait to see if the federal government dares to shut us down."

States have been enacting a variety of environmental protection laws over the past decade, many of which are modeled after similar federal legislation, some of which exceed their federal counterpart in degree of enforcement. S. 267 could preempt any of these laws if it is found they pose a barrier to the construction and operation of the pipeline. Also, laws governing planning, zoning, commercial and industrial land use, worker health and safety may be subject to preemption under this bill. In summary, a federal eminent domain law for coal slurry pipelines would cut

broadly into the ability of states to protect their environment, regulate their land use, resource development and the health and wellbeing of their citizens.

The granting of federal eminent domain powers to coal slurry pipelines is unnecessary and provokes new problems for states at a time in history when the federal government is trying to return many powers and responsibilities to those same states. We urge this Committee to play an active role in defeating S. 267 if it comes before the Senate this year.

Senator DANFORTH. Gentlemen, thank you very much.

As I understand it, the representatives of the farm organizations, four of them here and the NFO as well, you are not simply presenting your personal views of this legislation. These are the view of the organizations you represent, is that correct?

Mr. MULLINS. Yes.

Mr. MILLER. That is correct.

Mr. BERG. Yes.

Mr. SENTER. Yes.

Senator DANFORTH. So in other words the American Farm Bureau, the National Grange, the National Farmers Union, the American Agricultural Movement, and the National Farmers Organization are all opposed to the coal slurry pipeline bill. Is that right?

Mr. MILLER. That is right.

Mr. MULLINS. Yes.

Mr. BERG. Senator, I will have to speak up on that. We have not taken a position in opposition entirely to coal slurry. We have taken a position in opposition to granting Federal eminent domain.

Senator DANFORTH. That is what the bill is. So you are opposed to this bill.

Mr. BERG. I do not like to say that we are opposed to the coal slurry pipelines as such, but we are opposed to granting Federal eminent domain.

Senator DANFORTH. But I am saying the bill is a bill to grant eminent domain power for the purposes of constructing coal slurry pipelines.

Mr. BERG. We would be opposed to that.

Senator DANFORTH. Now also the Environmental Policy Institute, Mr. McCormick, you are stating the position of your organization?

Mr. MCCORMICK. Yes, I am, Senator.

Senator DANFORTH. Now I would like to ask the farm organizations what is the effect on farmers if, say, a Rock Island Railroad goes under? To what extent are you dependent on a healthy rail transportation system?

Mr. BERG. Well, Senator, farmers are very much dependent upon a healthy transportation system. Farmers use all three surface transportation modes—trucking, railroads, barges. Indeed, I testified yesterday on cargo preference in the House, so we are very much concerned about railroads, about abandonments, consolidations, and mergers.

Mr. MULLINS. The impact, Senator, is significant simply on the cost of shipping grain from Nebraska or grain from South Dakota. I do not have the actual cost per bushel, but shipment of a bulky commodity like that by rail is much more efficient from a cost standpoint than shipping it by truck.

You have all the other impacts of heavy truck usage on particularly secondary roads in rural areas. So we are dependent not only

on shipping the commodity out, but dependent upon the shipping of bulk commodities in—fertilizers—all of which would impact on the cost of production.

Mr. MILLER. Let me also add, Senator, that it ought to be understood that oftentimes farmers use numerous forms of transportation to get their goods from one place to another. A lot of times they will have to truck it either to a terminal where it is then loaded onto a rail line or it is loaded onto a barge or some other means.

But it also ought to be pointed out that to a great extent our ability to compete in the export market is totally determined by domestic shipping rates.

Mr. SENTER. In some cases, Senator, with the prices of grain as they have been in recent times, the difference in freight rate can be the difference in breaking even and losing money on your operation, and in some instances where some of the branch lines or elevators have had to go to truck traffic, the difference that they are able to pay the farmer has actually put some farmers out of business.

And we are very fuel conscious as well. The whole country got into conservation, you know, cut down on imported oil, and when you look at the difference of gallons it takes to move a ton by truck or by train, your rail transportation is the cheapest and most efficient way to move our commodities, and we have to move them to the consumers and we have to move them to export or we are out of business and people are out of food.

Senator DANFORTH. Senator Exon.

Senator EXON. Thank you, Mr. Chairman.

If I could comment on the chairman's question, I know personally of situations in Nebraska where with the abandonment of a rail line and the fact that they cannot move the grain the way they used to move it, have resulted in a net increase from 7 cents to 21 cents a bushel for the extra costs of moving the grain on a different mode, basically trucks, to a central location.

We were led to believe at one time that this really would not end up in any net additional cost to the farmer at all. I never did believe that, and my beliefs were proven accurate. The theory was that the grain would move to a central point and then to unit trains, and therefore, the cost would go down. It was a theory that, like many theories, does not work out in actual practice.

So let me just say that I appreciate very much the fact that you gentlemen have come forth with your excellent testimony on this entire matter, and that I was somewhat surprised today that during our deliberations somehow we got sidetracked into discussing that this is just another means of transportation.

It is far, far more than that, and as deregulation has shown in other areas in the airline deregulation and trucking deregulation, and now with more expense to the trucks with the new 5-cent increase that just went into effect on fuel on April 1—when it comes to food producers cost recovery is never passed up. Costs are always passed down.

And when they talk about passing down, that means less net for the farmers who are already seriously strapped, as we all know.

Let me say this: I think this is a rather historic moment. I have never before in all my years in public service seen all of the farm organizations and the environmentalists united on an issue. I am delighted to see that, and I am on your side. If I were on the other side, I might argue that there is reason enough to pass the bill if all these organizations are united against it, because there must be an awful lot of good connected with it.

But speaking seriously I think, Mr. Chairman, the fact that we do have a diverse group of people here testifying strongly against this bill indicates how unfairly it is going to impact rural America, particularly our food producers. So I guess I look at it this way.

First, I object very much to the Federal Government becoming involved in giving eminent domain rights.

Second, I am very much concerned and have been from the beginning about what it is going to do to the water rights of the States and the water tables of the States. I just introduced a bill the other day, once again regarding the Ogallala aquifer, which underlies a great portion of our food-producing States.

We are worried about the depletion of our water tables. We are launching into a situation where we could, if eminent domain is granted, see not one or two or three pipelines in the future but a whole series of pipelines. I am not particularly concerned, and I do not think it can be fairly argued, that one pipeline in one part of the country is going to so deplete the water supplies that it will have a serious impact.

But I am very fearful that with the trend that would be developed here we would have a whole series of siphons literally taking water out of the place where water is so critical to us primarily concerned about agriculture. So I am against the eminent domain part of it. I am against the water rights part of it.

Third, and most important of all, I suspect, at least in the short term would be the effect of this on the railroads, as I mentioned a few moments ago. This type of deregulation would, I am certain, affect railroad rates once again as with airline and truck deregulation to the detriment of our people that live in rural America.

We are going to see, unfortunately, in the near future a dramatic increase in telephone rates because of deregulation and other reasons. It means just more cost to those who depend on telephones so critically. We have already seen a significant increase in electrical rates and we are apt to see more in the future.

So I basically have no further questions to ask any of you except one that I will get to in a moment. I merely want to emphasize the fact that I think your testimony will have a great deal to do with the actions of this committee. At least, I hope so.

Let me ask this question just for clarification of the record. Most, at least, of the major farm organizations are represented here. Have any of the other farm organizations that any of you know of and that are not represented here, taken a stand in favor of coal slurry pipelines, or have the rest of them just remained silent on the issue?

Mr. BERG. I do not know of any other, Senator.

Mr. SENTER. No.

Senator EXON. Thank you. What about the environmental groups? Are there any environmental groups that disagree with

the testimony that you have given, Mr. McCormick, to your knowledge?

Mr. McCORMICK. My testimony related to the condemnation of private land. I do not know of any environmental organization that would take a counter position. I am aware of environmental organizations in the State of Florida who look favorably upon a slurry pipeline proposal to take coal from Illinois and deliver it to the Tampa-St. Petersburg area.

Senator EXON. On what grounds do they approve of that—as good for the economy?

Mr. McCORMICK. I think they saw the effect of unit train shipments of coal down along the western side of Florida.

Senator EXON. So they think this would be less danger to the environment?

Mr. McCORMICK. Yes. We have had many discussions with them about the disposal of tremendous amounts of contaminated water in that part of Florida. They were led to believe that the companies would do all that was required, and we kept pointing out that the companies have not shown that they have the technology to assure there would be no water contamination.

But I think it is safe to say that in general environmental organizations are opposed to the condemnation of private land for coal slurry.

Senator EXON. I asked a question earlier this morning about the concerns about the environment with regard to the pumping stations and the pits that have to be connected therewith. I got the impression from the testimony that there would not have to be any pits along the line, just pumping stations.

Is that your understanding as an environmentalist?

Mr. McCORMICK. Senator, my best understanding of the technology in moving that great volume of coal some thousand miles or so up and down all kinds of grades is that in the event there is a shutdown of the pipe the coal will begin to separate from the water and it will plug the pipe.

The only recourse then would be to flush out that segment of the pipe behind the break, behind the problem, so I cannot imagine there not being pumping stations and dump ponds every hundred miles or so along the pipeline.

Senator EXON. Were you surprised at the testimony we received in answer to that question this morning? Were you here?

Mr. McCORMICK. Yes, I was, Senator.

Senator EXON. I had never heard that before. I had just assumed that every pipeline would have to have at least some facilities to effect repairs when something happened inside that pipe.

Mr. McCORMICK. If I am not mistaken, dump ponds were addressed in the ETSI environmental statement as well.

Senator EXON. Thank you very much. Thank you, Mr. Chairman.

Senator DANFORTH. Let me ask you one other question, Mr. McCormick. You have not, except in answer to Senator Exon's question, testified with respect to specific environmental consequences other than the use of eminent domain itself.

Is there some study that you would recommend to us or are there some studies or documents which would present some of those environmental consequences?

Mr. McCORMICK. The construction of the pipeline itself we do not think would pose any environmental problem. I think the siting of the pipeline around wetlands and through areas where significant land disturbance might be overcome, I do not see that as a difficulty.

The water availability is so politically an issue that I cannot see a State legislature allowing, permitting the pumping of water where there would be any hint that somewhere down the road there would be water shortages. So I think the water availability question can be dealt with.

I am troubled by the Federal presence in this process of creating the coal slurry pipeline because then it is the Federal presence that is carried along in case a State wants to contest the terms and conditions in a permit.

Senator DANFORTH. Let me restate the question, if I might. There are various suggested environmental kinds of questions with respect to what happens if the pipeline leaks, how do you dispose of water at the other end and so forth. Do you have any information or any reports or studies that we should have knowledge of?

Mr. McCORMICK. There are several reports that were compiled under contract to EPA that discuss trace elements in the discharged water, contaminants that are added to the pipeline to prevent corrosion, et cetera. And as I read those reports, Senator, I do not see any conclusive proof that technology exists to remove all the contaminants, and what I see instead is reliance upon huge settling ponds as a means of settling out the contaminants.

Some of these contaminants are water soluble and I doubt whether they can be settled out. Therefore, I would consider the best available control technology being equipment-related, and with the massive volumes of water the pipelines would be handling I have not yet seen any demonstrated proof that they could discharge water without violating the Clean Water Act.

Senator DANFORTH. Gentlemen, thank you very much.

[Whereupon, at 12:49 p.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

COAL SLURRY PIPELINES

MONDAY, MAY 16, 1983

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Today the Subcommittee on Surface Transportation resumes its hearings on the potential effects of coal slurry pipelines. On May 5 we heard testimony from the railroad industry that pipeline construction would bring about a wipeout scenario for themselves and would result in increased rail rates on coal, grain, and other commodities, to the detriment of farmers and consumers.

Today we will be hearing about other effects on employment, on the railroad retirement fund, and on the supposed beneficiaries of these pipelines, the utility consumers. In particular, we will focus on what can be done to protect consumers from the ill effects of vertical integration by utilities, construction cost overruns, and long-term take-or-pay contracts.

It is said that coal slurry pipelines are necessary to promote competition, but it is my perception that competition will not result at all. The pipelines say they need long-term take-or-pay contracts in order to get financing. These contracts are not competitive. They lock up customers and prevent competition.

If the pipeline and the shippers or the customers are affiliated, such contracts become even more anticompetitive. And if market conditions change during the life of these contracts, as they surely will, one side or the other suffers the consequences.

If we want competition, fine, let's have competition—not every 30 years, but for the duration of the contract.

The first witness is Mr. Jim Snyder, chairman of the legislative committee of the Railway Labor Executives' Association. Mr. Snyder has some urgent business downtown trying to figure out how to patch up the railroad retirement system, but he wanted to be here this morning to make sure that Congress does not blow another hole in it first.

Mr. Snyder?

STATEMENT OF J. M. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY WILLIAM G. MAHONEY, LEGISLATIVE COUNSEL

Mr. SNYDER. Thank you, Mr. Chairman.

That is exactly correct. We do appreciate the opportunity, as always, to appear before this committee, and we are very grateful for giving us the opportunity to testify first because of the urgency of the railroad retirement and some aspects of that which has gone on between the railroad carriers and railroad labor.

I am privileged to have with me today Mr. Bill Mahoney, who is legislative counsel for the Railway Labor Executives' Association. And I am privileged to be here on behalf of all rail labor.

As the committee requested, we do have a brief statement and we have a full statement, and we would appreciate it if you would put the full statement into the record.

Mr. Chairman and members of the committee, as you know, the RLEA has testified many times over many years before many committees of both Houses of Congress on legislation very similar to S. 267. Now for the first time the construction and the operation of coal slurry pipelines is claimed to be a jobs bill.

The passage of the legislation would in fact result in a net loss of jobs to the citizens of the United States. That loss of jobs would be concentrated in the railroad industry, including its suppliers.

Due to limited time, I will direct my remarks primarily to the "jobs" aspect of the legislation. The 1978 OTA report which has been quoted and relied upon a great deal during the course of the many hearings on this subject before the Congress projected that by the year 2000 there would be 365,000 direct railroad jobs in the United States. It also projected that the construction of only 5 pipelines—then the only number being considered—would result in the loss of some 16,000 railroad jobs by the year 2000.

I might interject one item here, Mr. Chairman. It was my privilege to sit in on a lot of these things at the OTA when the study was made that concentrated on the five pipelines from the Midwest down to the Sunbelt, and there was without a doubt, two things that I think the report bore out, that the consumer was not going to get a break, the consumer would not be any better off, and there definitely would be a loss of jobs.

The 13 pipelines now proposed would cause the loss of some 41,000 rail jobs. Employment in the railroad industry today is almost as low as the OTA predicted for the year 2000. It has plunged from 514,000 in July 1981 to 388,000 in January 1983—a drop of 25 percent in 18 months—70,000 railroad employees are now on furlough. The railroad retirement system is facing disaster.

Those figures are now a little different, Mr. Chairman. I would personally like to thank you and the other Members of the Senate who voted in the 10-week extension of benefits for the railroad workers, and I think now it is a few more workers than that that will get the 10 weeks. And we are only talking about the 10-year man here.

Those who support this bill claim that the construction of the planned 13 slurry lines will produce some 500,000 new jobs which would include 50,000 direct construction jobs and 100,000 in manu-

facturing. I do not know where the 50,000 and 100,000 figures were obtained, but I think it is certain that the 100,000 jobs assigned to manufacturing will be jobs in other countries unless there is a buy-America provision in S. 267 as enacted.

It appears that this figure of 500,000 was arrived at simply by using Bureau of Labor Statistics methods. It would seem that proponents of this legislation estimated that $12 billion would be spent on pipeline construction and determined from Department of Commerce statistics what portion of that amount could be considered labor costs, and then divided that figure by the BLS average wage data in the heavy construction industry.

The end result of this arithmetic was 500,000. But that is not 500,000 jobs. It is only 100,000 jobs a year for 5 years, assuming construction takes 5 years.

If the pipeline movement will be 250 million tons of coal a year, the loss of that coal movement by rail and the loss of rail jobs must be measured against the jobs created by pipeline construction. The rail industry contends that the diversion of this coal from transport by rail to pipeline will mean that 39,000 rail equipment manufacturing jobs per year for 5 years will not be created.

Absent pipeline construction, the railroads would invest some $6.895 billion in hopper car and locomotive construction and track improvements. This investment would yield 197,000 jobs over 5 years, using BLS methods, or 39,000 jobs a year for 5 years.

In addition, the rail industry study shows that only 22,000 jobs will exist related to pipeline operations over a 30-year period, while 93,000 rail jobs would exist over the same period but for the pipelines. These figures are reached by applying the BLS method to projected revenues for the movement of 250 million tons of coal annually.

The revenue produced by pipelines and railroads for the movement of 250 million tons of coal would be about the same. When BLS methods are applied to these revenue figures, the result is that 22,000 permanent jobs would exist if the pipelines moved the coal, while 93,000 permanent jobs would exist if the movement was by unit coal train. In short, the country would suffer a net loss of 71,000 permanent jobs if pipelines are built.

Mr. Chairman, the light has caught me, but I would like to say this in conclusion, since I adlibbed over on the side here: that this would have a great impact on the railroad retirement system. As I pointed out, the impact is not only on rail labor, but in steel, locomotives, building locomotives, and the steel cars. All of these are built in this country.

As we tried to point out here on the railroad retirement, which I have attached up-to-date figures, the great impact it would have on railroad retirement.

It does not seem fitting, if the Congress, if we can work things out, and I am sure we are going to work the railroad retirement present system out, because it is in bad shape right now, but we are going to work it out, to work it out and then come around and pass coal slurry pipeline legislation which would undo everything that we have done here over the years.

And so we think under S. 1074, which is an agreed-upon package between the railroad and the management, that we will get this

worked out and hopefully get it worked out with the administration, too.

And we also appreciate the opportunity to be here, and if you have any questions we would be glad to answer them.

Senator DANFORTH. Mr. Snyder, thank you very much.

Now, your association consists of about 20 railway labor organizations.

Mr. SNYDER. Yes, sir.

Senator DANFORTH. How many total members are there of those 20 organizations?

Mr. SNYDER. Do you mean representation of the membership?

Senator DANFORTH. Yes.

Mr. SNYDER. I would say the figures that we have quoted on the railroad retirement would be just about the average figures. Is that not right, Mr. Mahoney?

Mr. MAHONEY. Yes, there are close to 400,000, 420,000 active and on furlough. And of course there are numerous who are on retirement that still belong.

Senator DANFORTH. About 400,000 members?

Mr. SNYDER. Yes, sir.

Senator DANFORTH. And of that number how many are now out of work?

Mr. SNYDER. Approximately 100,000.

Senator DANFORTH. So about 25 percent of them are out of work?

Mr. SNYDER. Yes, sir; about 25 percent in the last 18 months.

Senator DANFORTH. And what is your view as to how many more would be out of work as a result of coal slurry pipelines, assuming how many pipelines?

Mr. SNYDER. It depends upon the number of pipelines. If we had the 13 pipelines on the drawing board now through the Midwest and to the East here, it would be 41,000 or 42,000 and up.

Senator DANFORTH. 41,000 or 42,000?

Mr. SNYDER. And up, right away once it was constructed.

Senator DANFORTH. That is once they were constructed?

Mr. SNYDER. Yes.

Senator DANFORTH. And in turn, the effect of that on the railroad retirement fund would be what?

Mr. SNYDER. I think on the table we have here—let me look. For example, of course, it has two effects on the railroad retirement system, the unemployment system. For the first year, if it was all construction, it could go as high, anywhere from $105 million to $315 million. It depends upon the number of employees, if they had finished, say, seven pipelines or eight pipelines, the number of employees adversely affected.

So we started off at 15,000 on up to 45,000. So it could be between $105 million and $315 million.

Mr. MAHONEY. On the basis of the Federal Railroad Administration answer in testimony, we could extrapolate their answer and determine that if 40,000 jobs are lost the retirement fund would lose over $220 million a year or 24.4 percent of the savings which are to be realized by S. 1074, which we are attempting to get passed to save the system.

Senator DANFORTH. And then what would we have to do—"we" being Congress?

Mr. MAHONEY. Well, you have a choice, I suppose, Mr. Chairman, between just a flat bailout of the system in some fashion or totally change the system or wipe it out and put it in social security or something. But it would have to be completely changed.

Senator DANFORTH. Now, in your prepared testimony, Mr. Snyder, you say that—I think the word you used was "shocked" or "amazed"—that the Secretary of Energy rather than the Interstate Commerce Commission would have the responsibility for certifying that a pipeline is in the national interest.

I take it you believe that the Interstate Commerce Commission should have the responsibility for making that decision?

Mr. SNYDER. Yes, Mr. Chairman. The reason for that is because the Interstate Commerce Commission is set up with laws and all, and the Department of the Interior is not, to regulate interstate commerce, and energy as well. And so we think that it definitely should be in the ICC instead of the Department of Energy.

Senator DANFORTH. Can you spell that out a little bit, why you think the Interstate Commerce Commission should have the responsibility?

Mr. SNYDER. This is very simple, Mr. Chairman. It is a transportation—it is a matter of transportation, that you have them competing with another form of transportation, which involves rates and regulations, and you are going from one State to another. And so that is our main reason for it.

Senator DANFORTH. Senator Gorton?

Senator GORTON. No questions, Mr. Chairman.

Senator DANFORTH. Thank you very much, Mr. Snyder.

Mr. SNYDER. Thank you very much. Any time we can be of assistance to your committee, please call on us.

Senator DANFORTH. Thank you, sir.

[The statement follows:]

STATEMENT OF JAMES R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is James R. Snyder. I am Chairman of the Legislative Committee of the Railway Labor Executives' Association and the National Legislative Director of the United Transportation Union. I am accompanied by William G. Mahoney, counsel to the Railway Labor Executives' Association. I present this statement on behalf of the Railway Labor Executives' Association in opposition to the enactment of S. 267.

The membership of the Railway Labor Executives' Association consists of the chief executive officers of twenty standard national and international railway labor organizations.

I appear before you today to express the opposition of the membership of RLEA to legislation which seeks to extend the power of federal eminent domain authority to privately owned coal slurry pipeline companies. The most pernicious aspect of this proposal is that it masquerades as a jobs bill. Nothing could be further from the truth. This Act, if passed, will cost jobs, not create them.

The private carriers advantaged by this grant of federal eminent domain authority would direct their efforts at capturing the most profitable long-haul, high-volume coal traffic; traffic traditionally transported by this nation's railroads.

It is our conviction that the passage of such legislation in these times would not be in the public interest generally, and would, in fact, result in a net loss of jobs.

The RLEA has testified many times before on the subject of coal slurry pipeline legislation. S. 267 is very similar to those earlier legislative proposals which have consistently failed of enactment. The record already made on this subject is just about the most complete record available on any piece of legislation ever presented to the Congress. The detailed substantiated evidence supporting rejection of S. 267 as unneeded by and, indeed harmful to, the public interest we believe to be overwhelming.

The figures and methodology which we use in this testimony are derived from advocates and opponents of coal slurry pipelines, as well as the perhaps more objective conclusions of the 1978 OTA Report.

The impact upon railroad industry employment caused by the existence of coal slurry pipelines must be considered from two aspects: first, the direct impact occasioned by the diversion of coal transport from trains to pipelines resulting in fewer coal trains and therefore fewer on-train jobs and off-train support positions (including car and engine construction lost as a result of the diversion); and, second, the effect of loss of revenues upon a railroad's financial health and the efforts which must be made by that railroad to bring its costs in line with its reduced income. In the railroad industry this situation has historically resulted in severe maintenance reductions by the furloughing of maintenance of way and equipment employees.

The 1978 OTA Report has been extensively quoted and relied upon by opponents of coal slurry pipelines since its issuance. That report concluded that the five pipelines than being considered for construction would by the year 2000 result in the loss of some 16,000 railroad jobs at a time when employment in the industry would be about 365,660. But employment in the railroad industry is now nearly as low as that then predicted by OTA for the 2000, having plummetted from 514,000 in July 1981 to 388,000 in January 1983; a drop of 25 percent in 18 months. Some 70,000 railroad employees are now on furlough. The Railroad Retirement Board has estimated 1992 employment between 340,000 and 245,000. Consequently, in the year 2000 from about 4.7 percent to 6.5 percent of the work force would lose their jobs because of the construction of only 5 coal slurry pipelines.

Because of the adverse impact the construction of slurry pipelines would have on railroad employment, at a minimum an amendment to S. 267 is necessary to protect the employees affected by this Act of Congress. Such an amendment is attached to this statement. The proposed amendment would require as a condition of certification by the Secretary of Energy under Section 4 of the Act, that the applicant provide protection to affected rail employees at least as protective of their interests as the protection afforded in rail consolidation and merger cases under the Interstate Commerce Act.

It is alleged by sponsors of this legislation that this is a jobs bill. It is claimed that construction of planned slurry lines will produce 500,000 new jobs, including 50,000 direct construction jobs and 100,000 jobs in manufacturing. Quite aside from the fact that these types of jobs would be temporary in nature, unlike the permanent railroad jobs which would be lost, the figure itself does not bear analysis when netted against the loss of railroad equipment manufacturing jobs because of diversion of coal traffic to pipelines.

The figure of 500,000 jobs was arrived at by using the Bureau of Labor Statistics input-output methodology. Sponsors and proponents took an estimate that $12 billion would be spent on pipeline construction, determined from Department of Commerce statistics what amount would be attributable to labor costs, and divided that figure by the BLS' average wage data in the heavy construction segment of the economy.

However, it is intuitively obvious that the $12 billion will not be spent all at once. As the witnesses before this Subcommittee point out, it is likely that that sum will be spent over a five-year period, and the jobs created will not cumulate. Therefore, even optimistically, all that the expenditure can promise is 100,000 jobs annually for five years. No money related to the construction of slurry lines will exist after that.

Further, using the proponents' figure of pipeline movement of 250 million tons of coal annually, the attendant contraction of coal movements by rail and its adverse effect on rail employment must be netted against pipeline construction job creation. The detailed rail industry analysis before you correctly points out that diversion will mean that 39,000 rail equipment manufacturing jobs per year for five years will not be created. Absent pipelines construction, the railroads would invest $6.895 billion in hopper car and locomotive construction, and track improvements. This investment would yield 197,000 jobs over five years (using the BLS methodology), or 39,000 jobs annually for five years. This figure must be netted against the overall pipeline construction job figure of 100,000 annually.

In addition, the detailed rail industry analysis based upon the BLS methodology shows that only 22,000 operating jobs will exist on the pipelines over a 30-year period, while 93,000 rail operating jobs over 30 years would be created annually but for the pipelines because rail operations are inherently more labor intensive. These figures are derived by applying the BLS methodology to projected revenues for the movement of 250 million tons of coal annually, which is the amount of coal the pipelines would move annually according to slurry pipeline data. Unit train and slurry pipeline transportation of 250 million tons of coal each would yield about $3.5 bil-

lion of revenue. When the BLS methodology is applied to these revenue figures, the result is that 22,000 annual operating jobs would exist if pipelines moved the coal, while 93,000 annual operating jobs would exist if the movement has by unit trains. In short, the nation would show a net loss of 71,000 jobs for each of the next 30 years if pipelines are built.

It is clear that even assuming immediate construction of all slurry pipelines, which is most unlikely, the net effect of job creation would be definitely on the minus side.

The effects of individual coal slurry pipelines on individual railroad employment could be even more severe if such pipelines were to drive such railroads into reorganization and bankruptcy. In such cases, the employees and this Congress would be faced with future Rock Island, Milwaukee and Conrail situations.

This Committee need not be reminded of the precarious situation in which the Railroad Retirement Trust Fund finds itself. The Congress is currently undertaking to repair the damage done by sharply declining railroad employment with the cooperation and sacrifice of the rail industry—management, employees and retirees. Any further erosion of rail employment occasioned by diversion to pipelines could doom to failure that effort and indeed any effort to save a railroad retirement system for the nation's rail employees. Recent evidence submited to this Subcommittee by the Federal Railroad Administration indicated that a loss of 25,000 railroad jobs by 1990 would cause a decrease in revenue to the railroad retirement trust fund of $138 million annually. Over a ten year span this loss would cut by more than 15 percent the savings through increased taxes on railroads and employees and benefit cuts which S. 1074 regards as essential to saving the railroad retirement system. If 40,000 jobs are lost the retirement fund would lose over $220 million a year or 24.4 percent of savings to be realized by S. 1074. General revenue bailout of the Trust Fund cannot be ruled out as a possibility should that occur.

Quite aside from the adverse effect on employment, rail labor is amazed that this body would contemplate a total bypass of the Interstate Commerce Commission in the proposed certification process. The Secretary of Energy is ill equipped to deal with the weighty common carriage transportation considerations which should be part of this bill procedurally. But this bill grants authority to the Department of Energy without the aid of meaningful standards.

The testimony and documentary evidence which have been presented to the Congress over the past five years demonstrate conclusively that coal slurry pipelines are not needed; they are environmentally unsound; they deplete already overburdened water resources; they represent a specialized, inflexible use of energy; their construction would contradict established Congressional policy of revitalizing the nation's railroads; and, would provide private carriers the combined advantages provided private and common carriers without the attendant disadvantages of either. That testimony and evidence also demonstrate that railroads can meet the increase in demand for coal transportation at rates probably lower, but at least comparable to pipeline rates; and, that railroads are at least as energy efficient, if not more energy efficient, than pipelines.

However, if pipelines are afforded federal eminent domain authority, railroads will be placed at a disadvantage that will seriously handicap their ability to compete. The only way to avoid the destructive competition which would result from private coal slurry pipeline companies' use of eminent domain authority is to recognize now that pipelines do not offer needed or improved coal transportation, while at the same time, they would undermine the financial stability and service availability of the nation's railroads. We respectfully submit that that is too high a price to pay for an alternative system of transportation that can produce no measurable improvement over what can be provided by the existing railroad system.

In closing, I would like to refer this Committee once again to the detailed report issued in 1978 by the Subcommittee on Transportation and Commerce of the Committee on Interstate and Foreign Commerce following extensive hearings on H.R. 1609, one of the many predecessors of S. 267. That report concluded: "Federal promotion of coal slurry pipelines in the manner contemplated in H.R. 1609 would undermine the national transportation policy and, with it, the system of common carriage."

Thank you for this opportunity to present to you the views of the RLEA on this important subject.

AMENDMENT TO S. 267

Page 6, line 10, after the period insert the following: The Secretary shall not determine that construction of such system shall be in the national interest unless his

determination requires that the applicant provide a fair arrangement for the protection of employees of rail carriers affected by the issuance of such determination, including terms at least as protective of the interests of such employees as the terms required under section 11347 of Title 49.

Senator DANFORTH. Mr. Duxbury.

STATEMENT OF LLOYD DUXBURY, PRESIDENT, RAILROAD RETIREMENT ASSOCIATION

Mr. DUXBURY. Thank you, Mr. Chairman.

My name is Lloyd Duxbury. I am president of the Railroad Retirement Association. This association was formed last summer as a nonprofit corporation under the Code of the District of Columbia. It is an individual membership association without any capital stock and with the members holding the voting power. The association is not in any way affiliated with, nor does it represent, any element of organized rail labor nor any element of rail management. It is intentionally designed and structured to be governed by and for and to serve the interests of only railroad retirees.

The first members joined in the middle of September 1982, a total of 200 that month. There are now over 9,000 members and there are new memberships coming in every day. Our goal is 25,000 members by the end of this year, and we anticipate continued growth thereafter. Present membership encompasses every State in the continental United States.

RAILROAD EMPLOYMENT

Each railroad retiree has a personal interest in employment in the railroad industry because railroad pension security is inextricably tied to the level of that employment, whether the railroad retiree likes it or not. So far as I can determine, the railroad retirement system is the only private company pension plan completely regulated and governed by Federal statute—and that has been true ever since the system was first established by the Congress in 1937.

Attachment I[1] hereto is a copy of a publication dated July 8, 1981, by the Office of Information and Public Affairs of the Association of American Railroads, entitled "The Railroad Retirement System—Its Story and its Problems." That publication is a good history of the system. The private company pension plan portion is what is called tier II of railroad retirement. As stated in the attachment, "the second tier is based on railroad service only and is comparable in concept to the private pensions paid workers in other industries." It is like other private company pension plans except that the tax contributions to the fund are limited to those fixed by statute and they are based only on "active workers." Therefore, the fewer employees a railroad company has, the less it has to pay into the fund—a railroad worker out of work means a reduction in cash flow into the fund. A reduction in cash flow into the fund adversely affects the pension security of the retiree.

Recent action of the Railroad Retirement Board has thrown the hundreds of thousands of railroad retirees into near panic—a threat of a 40-percent cut in the railroad retirement private compa-

[1] The attachments are in the committee files.

ny pension in October 1983 and possibly as much as 80% in 1984—all because of a cash flow problem in the fund.

The congressional hearing record on this legislation over the last 9 or 10 years clearly establishes that this legislation would result in a shift of large volumes of coal from trains to pipelines. That record also clearly establishes that the resulting loss in railroad jobs would be significant—somewhere between 16,000 and 40,000 jobs.

There are already too many railroaders out of work. Both rail labor and rail management have emphasized that employment in the industry dropped from about 510,000 in August 1981 to about 388,000 in January 1983, a drop of almost 24 percent.

The current high unemployment in both the railroad industry and the coal mining industry belies any claim that the railroads cannot or are not doing the job or that the railroads don't have the capacity to meet coal hauling demands in the predictable future. Mr. James B. Crawford, president of Transco Coal Co. admitted in his testimony before this subcommittee that coal is not in short supply and that the market for coal is weak, not strong.

The promoters of legislation to give coal pipelines the extraordinary Federal power of condemnation have shown no compelling reasons for disrupting an established transportation system which is not only doing the job, but is doing it with almost 20 percent of its work force unemployed and with significant idle capacity, and upon which hundreds of thousands of retirees are dependent for their pensions.

THE FEDERAL CONDEMNATION POWER—A BIG CLUB

The power to take property away from a private owner is an extreme power—a power which should not be handed out except in very extreme and unusual circumstances which make it an absolute necessity and for which there is no possible alternative. All things being equal, under our system of government and justice, the private property owner should be given the benefit of the doubt.

We say in this country: "A man's home is his Castle." For a retiree it is not only his or her "Castle", but in most cases, his or her main asset, if not only asset.

There is no justification for authorizing powerful private special interests to wield the club of Federal condemnation power against individual property owners for a coal slurry pipeline. No individual private property owner can come out whole in a condemnation proceeding. The individual property owners are confronted by batteries of lawyers and land appraisers in the employ of the condemnor and have to hire lawyers and land appraisers to defend themselves.

Powerful special interests like to use the condemnation power as a club to force the property owner to give in on terms dictated by them. That condemnation power puts the individual private property owner at their mercy. That's how that Federal condemnation club enables them to save money—and they admit they do save money—at the expense of the private property owner.

For the individual property owner this is a consumer issue.

THE CONSUMER IN THE PIPE: COST—TAKE OR PAY—INTEGRATION

Pending legislation contains no protection for the electricity consumer, no guarantee, assurance or commitment that the transportation cost by pipe will be less than by rail. Promoters of coal slurry legislation have always opposed provisions requiring as a prerequisite condition a determination that the cost will be less by pipe, and in prior years they have tried to muddy the issue by admitting that there would be no savings in the beginning, but claiming that there would be savings down the road. Why do they fear provisions of that kind, provisions without which there is no protection for the consumer?

In his testimony before this subcommittee Mr. James B. Crawford, president of Transco Coal Co. and vice chairman of the Slurry Transport Association admitted that under the pending legislation the rates charged by the pipeline company would not be regulated.

Mr. Crawford also testified that take or pay contracts are essential to the financing of coal slurry pipelines. Who would be the parties to the take or pay contract—the utility and the coal pipeline company? What if the utility owns the coal pipeline company? What if the utility owns the coal company and the coal pipeline company? What if the coal pipeline company owns the coal company? What if a conglomerate holding company owns the utility company, the coal pipeline company and the coal company?

This legislation will foster and encourage further integration—complete integration—in the utility industry. Utilities already own large reserves of coal, called captive coal. Now the utilities want to own the facilities for the transportation of the coal. Captive coal is coal owned by or under control of a utility or an affiliate of the utility. Because of concern about the incresing reserves of captive coal the Congress required the Department of Energy to compile and publish information as to quantities of captive coal.

The only take or pay coal contract I have ever seen provided that the buyer of the coal to be transported would pay the full actual cost of construction, whatever that amount turned out to be, plus an additional percentage for return on investment for the owners of the pipeline. There was no mention of overrun in that contract.

Who is going to complain about overrun when the utility owns the pipeline company or the utility and the coal pipeline company are under common control? In his testimony Mr. Crawford seemed anxious to make the point that coal pipelines will not be like gas pipelines, that the coal pipeline will merely provide a transportation service, but what in the legislation would make coal pipelines any different than gas pipelines in these regards?

In recent years the Justice Department has brought to the attention of the Congress the antitrust problems to which vertical integration can give rise under legislation of this type. Vertical integration has been a major concern in antitrust enforcement for many years because of the potential it creates for discrimination and monopoly profits. Legislation of this type must contain restrictions on vertical integration to prevent common control of the coal supply, the coal pipeline and the facility which will consume the coal. The Justice Department pointed out that the effectiveness of vertical integration restrictions depends largely on the scope of the

term "control" in the legislation and reported that economic studies and the experience of the Department and of other governmental agencies indicate that the only realistic and effective control standard as to stock is 5 percent of the voting stock.

Without provisions properly restricting common control and provisions determining and controlling construction costs and provisions controlling and regulating take or pay contracts and costs of coal transportation by pipeline, legislation of this type provides no protection for the consumer, but, on the contrary, fosters a scenario conducive to discrimination and monopoly profits, all to the detriment of the consumer.

DON'T PUNISH THE INNOCENT FOR THE SINS OF THE GUILTY

The utilities and coal companies charge the railroads with "gouging" them in rail coal rates and complain about the percentage of coal which is captive to the railroads. Also they complain about the railroad deregulation law.

Yet they don't make an all out effort to correct the alleged evils in that law nor to correct the other evils they cite. Instead they ask the Congress to cloak coal slurry pipelines with Federal recognition and status and to give them the right to use the extraordinary Federal power of condemnation and to operate with Federal sanction without any protection for the consumer. They would have the Congress punish the property owners and the consumers for the sins of the railroads. If the railroads are guilty of the sins alleged, it is the railroads which should be punished, not the property owners and consumers in this country.

Senator DANFORTH. Mr. Duxbury, let me ask you if you could just in sum, to spell out what your concerns are with respect to the effect of coal slurry pipelines on the railroad retirement fund.

Mr. DUXBURY. Well, it will effectively reduce the employment in the railroad industry, without question. It will shift large volumes of coal from trains to pipeline, and this will naturally put employees out of work in the railroad industry. The estimates range anywhere from 16,000 to 41,000 employees.

And one of two things is going to have to happen if that takes place: The taxes are going to have to be increased as the contributions to the fund or benefits will be reduced, one of the two. There are no other alternatives other than Government financing of it, which is not well thought of.

Senator DANFORTH. And again, the link is what—that employment is reduced on the railroads, therefore it is automatically reduced on the retirement fund?

Mr. DUXBURY. It automatically reduces the contribution to the fund, automatically. And because the employment is a tax contribution under the statute, a percentage of the payroll of active workers, if the number of active workers is reduced then the contributions to the fund in total are reduced automatically.

Senator DANFORTH. Now, I am told that you have some comments to make with respect to take or pay contracts and the fact that the pipelines would almost certainly be financially possible only if they were based on long-term take-or-pay contracts. Would you care to spell out your views on that?

Mr. DUXBURY. Yes; as I understand the testimony of most of the pipeline people, including the man from Transco, the take-or-pay contracts are essential to the financing of the coal slurry pipelines, and one of the problems that you come upon here is the issue of integration, vertical integration in the utility industry, because under this legislation as I understand it a coal pipeline can be owned by a coal company or can be owned by a utility, or a utility can own a coal pipeline or a utility can own both the coal and the coal pipeline, or a holding company, conglomerate holding company, can own the utility, the coal pipeline, and the coal company.

And there is no control restriction of any kind in the legislation. They talk about take-or-pay contracts. If the coal company owns the coal pipeline and the contract is made between the coal pipeline company and the utility for the transportation of the coal over a 25- or 30-year period at a fixed price, how is that ever going to be changed if the situation changes where the price is higher than should be paid because of a change in conditions? The contract is there.

In order to protect the consumer, legislation of this kind must have control provisions so that you cannot have the vertical integration which can result without them, where the coal pipeline people, if they own the coal, and/or the utility or vice versa, want to protect their own investments and they will not be concerned about the effect on the consumer. There will be no way of getting out of a long-term contract.

I notice now there is the right claimed to review contracts. I think the control of the contracts should be limited in terms of years and that a regulatory authority over the contracts should be given to the Federal Energy Regulatory Commission to protect the interests of the consuming public.

Senator DANFORTH. Thank you very much, sir.

The next witness is Mr. Fisher.

STATEMENT OF KAREL V. FISHER, VICE PRESIDENT, TEKNEKRON, INC.

Mr. FISHER. Mr. Chairman, my name is Karel Fisher. I am vice president of Teknekron, which is a firm which provides professional consulting services in regard to the energy and transportation industries in this country. My firm's headquarters are in Berkeley, Calif. My educational background is in transportation management and finance, environmental planning and philosophy. I hold degrees from Occidental College, a bachelor's degree, and master's degrees from Yale and from the University of California at Berkeley.

Immediately prior to joining Teknekron 6 years ago, I was employed by the Institute of Business and Economic Research at the University of California, where I served as project director for a major assessment of the short-term and long-term capital requirements and capital-raising prospects of electric utilities in this country.

During this period, I also served as an independent consultant to the California Energy Commission in an evaluation of the terms under which facilities associated with supplemental sources of natural gas could be financed, and here, the interest focused on LNG

projects primarily, though to some extent coal gasification facilities.

Since joining Teknekron, I have been involved in over 100 coal-related research projects for approximately 40 firms. The research has been conducted in behalf of current and would-be coal consumers, coal producers, and coal transporters.

I appreciate the opportunity to appear before you today to discuss some issues I believe need to be raised in connection with coal slurry pipelines. I would like to preface my remarks by telling you that I have submitted testimony on these topics on an earlier occasion. That testimony was submitted to the Oklahoma Corporation Commission about a year ago, actually, about 16 months ago, when the Commission was inviting comments on the application of Energy Transportation Systems, Inc., that is to say, ETSI, for a license to transport coal by slurry pipeline within the State.

My remarks in that testimony dealt with certain matters relating to the economic feasibility of the proposed ETSI pipeline. Oklahoma law requires such applicants demonstrate that the proposed pipeline makes sense economically. I should say that the Oklahoma proceeding basically dealt with the same type of issue that you are dealing with. That is, the rights to eminent domain.

I have submitted a copy of my testimony before the Oklahoma Commission to the committee for its files.

For my previous testimony, I was afforded some time to gather available information, to perform some economic analyses and consider the results. My basic conclusions were that for Oklahoma utilities and for the customers, the utility ratepayers, the ETSI pipeline did not seem to make any sense whatsoever.

As for investors, the pipeline appeared to be only marginally attractive under the best of circumstances, and I would be pleased to talk about those circumstances later.

In my work regarding the ETSI case, I uncovered a number of financing difficulties that I think would be connected with coal slurry pipelines in general. I shall sketch some of these difficulties and suggest a way to avoid these problems, and I think they are very, very real problems, and that is to avoid them by sticking with known entities.

Senator DANFORTH. What?

Mr. FISHER. Known entities. That is, our existing very much underutilized coal transportation system in this country, and that has to do with railroads, barges, trucks, and so on. I am going to talk about some of these financing difficulties now.

For any pipeline, I believe the sponsors would probably seek a special type of financing called project financing. Project financing would permit the sponsors to separate the credit standing of the project from that of their firms. The creditworthiness of the project would then be evaluated by considering the collateral represented by, first, the physical capital assets, second, the projected earnings stream, and third, any assurances that might be offered to the investors regarding the recoverability of their investments in the project and their chances for realizing returns on those investments.

Unfortunately, in my view, neither the physical asset, the slurry pipeline itself, and here we are talking about its salvage value, ba-

sically, nor, at least in the case of ETSI, the projected earning stream—I showed in the Oklahoma testimony, that the pipeline would not be earning any money until the 12th year of operation—that neither of these in the case of ETSI, neither of these things have much value.

Thus, to increase the likelihood that sufficient financial capital will be made available for a project, the sponsors and potential lenders will have to secure ironclad guarantees that all prudently incurred costs be recoverable in a pipeline contract. Such costs would include all capital investment, debt service, and operating costs.

Since to my knowledge no pipeline sponsor has made public specific contract provisions, I am unable to assess their reasonableness or their implications for any specific utilities or ratepayers.

However, judging by the types of provisions sponsors of other capital-intensive energy projects have sought over the last few years, I would expect pipeline sponsors to seek a type of take or pay contract that would require consumers to immunize investors against the following risks: the failure to complete the pipeline; cost overruns; the need for additional financing if cost overruns occur; premature abandonment of the pipeline; the inability to secure water supplies or the curtailment of water supplies later; the placement of certain taxes on water usage; more stringent standards for waste water treatment, resulting in the need for additional capital to redesign the existing facilities; problems in the negotiation or renegotiation of coal supply contracts; and finally, the possibility that any regulatory commission involved here would no longer be willing to have the firm, the utility agree to all the terms of the take or pay contract. Here I am talking about the so-called regulatory risk, which is very real, I believe.

This appears to be an absurdly large burden for consumers to have to bear. The only alternative, it seems to me, would be Federal loan guarantees. Whether guarantees of this type could be justified for the purpose of providing a select group of consumers with another transportation mode is in my view problematic.

Now, having looked at the pipeline risks and at who would probably have to bear them, in my view, the electricity consumer, let me turn to the risks people have customarily associated with the rail transportation of coal. These are, to begin with, unpredictable escalations in the cost of labor, fuel, and other factors. Furthermore, prior to the passage of the Staggers Act of 1980, some observers suggested that railroads would be saddled with more and more noncompensatory traffic and unproductive branch lines, pushing coal transportation costs upward at a rapid rate.

The Staggers Act mitigates these risks. Indeed, with this mitigation, rail transportation along with barge and truck movements should be able to satisfy the coal shipment needs to be addressed by the Secretary of the Department of Energy as directed in the proposed S. 267. The effect of the Staggers Act most basically has been to relax restrictions that heretofore have prevented the railroads from competing for long-term business. As a result of the act, railroads can now enter into long-term contracts with their shippers, which vastly diminishes the chance of unpredictable increases in railroad costs.

Furthermore, railroads are now permitted to rationalize both their traffic mix and their track systems, which should greatly reduce the extent to which the profitable traffic subsidizes the unprofitable.

As these old impediments are toppling, the railroads' inherent strengths remain. An extensive track system is in place. Costs are distributed over many commodities and many shippers, and even with the failure of one or more components, the system as a whole continues to function. In the case of pipelines, by contrast, the systems are not in place, and the cost would be concentrated on one commodity and just a few shippers, and of course failure of one component could bring the whole system down into the laps of the electricity consumer.

In other words, the railroads, along with other currently operating modes, should be able to handle the Nation's coal transportation needs very adequately, for the foreseeable future.

Senator DANFORTH. Thank you very much, sir.

Now, you have stated the risks to consumers of long-term risk-free contracts to the pipelines. This bill has been reported out of the Energy Committee of the Senate. It will go to the floor of the Senate, and we will be responsible for offering amendments on the floor, in an effort to make the bill better, if it can be made better. What amendments could you suggest for dealing with these risks to consumers, especially relating to the long-term take or pay contracts?

Mr. FISHER. I guess the first thing I would suggest is something the State of Oklahoma has in its law, and that is a test of economic feasibility. I think that, in the case of the Oklahoma Corporation Commission, ETSI has not demonstrated that it is economically feasible. In fact, I believe it is not feasible.

I would suggest a test of the demonstration of the economic feasibility of any specific pipeline. Certainly that would enhance this bill, I think.

Senator DANFORTH. Who would be the judge of that test?

Mr. FISHER. I think that ultimately the judge must be the State public utility commissions because they are the closest to the utilities. They regulate their rates and in most cases their investment policies and practices. I think it would probably be legitimate to have a Federal agency involved in some way, but the ultimate authority, in my view, should be a State agency.

As for how one deals with these take or pay contracts, I am really not certain. It is a problem that I know a lot of firms, utilities and sponsors of LNG projects, as I mentioned before, and slurry pipelines have all grappled with. It is not clear how you deal with a project which has a very high capital cost, has many technical and market risks, has a tremendous cost overrun risk, will have regulatory risks. It is not clear how you get such a project financed. Certainly, the sponsors are not willing to do it. At least in the case of ETSI, I would very much doubt that the sponsors are doing it.

ETSI itself, as you probably know, is just a partnership. It is basically just a shell organization. That is to say, Bechtel and Texas Eastern and the other sponsors do not stand behind it. They are not going to take the risks. I seriously doubt that lenders are going

to take the types of risks I have described here. They just do not have to. There are lots of other worthwhile projects.

Utilities are not going to take these risks because taking them may prevent their engaging in other worthwhile activities such as building power stations, which is what they are supposed to be doing. Utilities will not be interested in taking these risks because any involvement here would have to be described as a substantial contingent liability in financial statements.

And, I just do not think it fair that the electricity consumer be put in this position of tremendous bearing of risks. He is not an equity participant. He is just supposed to receive the lowest cost electricity.

So, sir, I frankly do not know how to deal with the matter of how one gets these projects financed.

Senator DANFORTH. Well, could not the legislation simply prohibit construction cost overruns from being passed on to consumers?

Mr. FISHER. Certainly, and that would be a good place to start. You could certainly require that the sponsors stand behind all of these risks, bear all of these risks, but I very much doubt that they would do so.

Senator DANFORTH. They just would not enter into a deal unless they would be totally protected from any risks?

Mr. FISHER. I think that is probably true.

Senator DANFORTH. Why is that? It just seems that is contrary to the way we are used to doing business.

Mr. FISHER. Well, it sure does, and I think that there is a very fundamental public policy question here. Can we really afford to get involved in these very, very capital intensive projects which have an awful lot of technical, market, and regulatory risks? As you probably know, people, have been grappling with this for some time. The Federal Power Commission grappled with it. Congress has for a decade grappled with this problem. And nothing has happened.

Senator DANFORTH. We could prohibit take or pay contracts.

Mr. FISHER. Well, there are certain provisions of take or pay contracts you may want to deal with. I think you could argue with what used to be called an in-all-events tariff. Under that tariff, practically any cost that was incurred would be passed along to the ultimate consumer. All the cost overruns. All the refinancing, project abandonment, that sort of thing.

I think that there are specific provisions that you would probably want to have the sponsors bear, but I do not know that you should think of prohibiting take or pay contracts of any type. The real question here is one of the distribution of risks and rewards.

Senator DANFORTH. Some of us are suggesting doing away with take or pay contracts, or at least limiting them with respect to natural gas, limiting them as to percentage or as to duration. We could provide for that presumably in the legislation.

Mr. FISHER. I think that would be a good idea.

Senator DANFORTH. Now, let me ask you to address yourself to another question. One of the arguments that is made in favor of the coal slurry pipelines is that competition is good, that right now the railroads have a captive market. They are able to, without any competition at all, deliver coal from the coal mine to the utility,

and therefore it is said that they are able to run up the cost of transporting coal to the detriment of the utility and ultimately the consumer. And therefore it is said that this country is based on competition. The railroads should have competition, there is nothing wrong with competition. Only a percentage of coal would be hauled by coal slurry pipeline as opposed to rail, but let us factor that competition into the transportation of coal.

On the other hand, it is argued that maybe the competition would exist in the first instance, but if you have a long-term contract—20, 25, 30 years, whatever it is—the competition would end as soon as the contract is signed, and there would be absolutely no competition thereafter. The coal slurry pipeline would have to keep pumping along the coal day in, day out, for a period of, say, 20, 30 years.

How would you address this question of competition? How are we better off as far as competition is concerned with or without coal slurry pipelines?

Mr. FISHER. Well, I would just like to talk about ETSI. It is a specific case, and it is a case that I am familiar with.

In the case of ETSI, I think it is conceivable that you could maintain competition at least in the abstract, but as a practical matter not. In the abstract, in theory, if for each power station that received coal by coal slurry pipeline, there were arrangements made to take half of the coal by rail and half of the coal by pipeline, and the contract with the pipeline and the contract with the railroad and the contracts with and all of the producers involved here had plus or minus 100 percent delivery, presumably in that case you could maintain this competition.

Well, there are going to be so many complications, I just cannot see that happening, really. It is just not a practical way to conduct business, and I just do not think, to get back to this question of financing, that that can really happen. I do not think you can get the pipeline financed under that set of circumstances.

As for the broader question of do railroads have a "monopoly" or is there sufficient competition, I am not a lawyer, and as I understand it, there are quite a few legal issues here in terms of market definition, appropriate market, and so on. But I would say, in general, that, before utilities make their coal supply and transportation decisions there is a tremendous amount of competition among railroads and among coal producers, I would say further that in an ex post sense, there probably is no situation in the whole country where a consumer could not switch sources of coal or mode of transportation in a short period of time, say, 3 years.

I really do not think that the pipeline would add a whole lot. In fact, I think, as you suggested, it would basically tie up an awful lot of consumers, and remove for 30 years any possibility of competition. It is just necessary to get the pipeline financed.

Senator DANFORTH. Senator Exon?

Senator EXON. Mr. Chairman, thank you.

Mr. Fisher, you have mentioned the ETSI pipeline group to some extent in your testimony. I have had a great deal of experience with ETSI. Ten or 11 years ago, when I was early in my first term as Governor of Nebraska, the ETSI people came in to see me. One of the key points made then was that the right of eminent domain

either at the State level or at the Federal level was the farthest thing from their mind—they said that it just were not necessary.

Now the tables have been completely turned, and ETSI and the other pipeline companies are here saying we must have eminent domain rights. I cite that only for the record, to drive home once again that things evolve out of those discussions that abruptly change what was once a fundamental, or at least stated to be a fundamental by people who first decided that coal slurry pipelines were an efficient system of moving coal, and indeed were good for the consumer.

I very much appreciated your testimony this morning, and since you have been in this area for a while, let me ask you a series of questions that might help throw some light on the related problems that coal slurry pipelines would cause not only to our transportation system but also to our whole budgetary process. The fact is that we rely upon railroads for a great deal of transportation today, especially in my section of the country, where we do still maintain the rails as the principal movement for our grain to the markets overseas and sometimes domestically.

Have you done any estimates in your organization about if we grant eminent domain rights, which basically are the key feature of the bill before the Senate, how many pipelines would be built?

Mr. FISHER. Well, I really do not know, Senator. It depends very much on the types of strings that you attach to the legislation, or what is in the legislation. I am not sure that the simple granting of the rights of eminent domain would be sufficient to get the pipelines rolling. I think a fundamental question would still remain as to their economic feasibility.

Senator EXON. Don't you think that the pipelines will not get rolling if we do not grant eminent domain rights?

Mr. FISHER. Do I think that they will not get going?

Senator EXON. I said rolling. Let me try and clarify the situation. One pipeline from Wyoming to Arkansas is, in my opinion, not going to disrupt the whole structure of our transportation system. However, I am very much concerned about the fact that once we have one pipeline in, and laws are enacted to allow that, then pipelines are going to spread throughout our transportation system. I am trying to look not only at the immediate situation, but also where we are down the road.

Now, your first response to my question indicated to me, and correct me if I am wrong, that maybe you did not think that the granting of eminent domain was of critical importance.

Mr. FISHER. I think it is very important, but I do not think that that act alone, if the pipeline sponsors were granted the right of eminent domain, would be enough. They still have to demonstrate to investors and to, I would hope, State utility commissions and a lot of other people that these things make sense. And in my view they do not make sense.

But to answer your question about the long-term effect, I think that if one pipeline were built, the question is the overall effect on the railroads. Well, there are two possible ways to look at this. You can simply say that if you take some traffic away from the railroads and revenues away from the railroads, coal revenues, that the railroads will simply shift that burden, those fixed costs and

other costs, over to other commodities, other shippers. Then, and if that can happen, I would think that all of the other shippers, the ones that face higher transportation costs, would be most concerned about the pipeline and how to really oppose these pipelines.

On the other hand, if there is a great deal of competition from trucks and barges and other modes for the traffic and railroads are not able to simply shift the burden elsewhere, then I would think this bill, this legislation would basically be inconsistent with the purposes of the Staggers Act, which is to make railroads healthy. I am saying that it is conceivable that railroads are not going to be able to just shift the burden. That is, they are going to be stuck, revenue short, profit short, and the railroad system will go downhill, which is what the Staggers Act was meant to remedy.

I think if it is true that railroads cannot shift the burden, and if one railroad goes downhill, I think it quite conceivable that other pipelines will be built. This thing can snowball, is what I am saying. I think pipelines, one after another, might be proposed, and might make sense, particularly if the railroad industry is very sick.

Senator EXON. Well, I agreed with your last statement 100 percent, Mr. Fisher. I take it then that you are opposed to the granting of eminent domain rights under the bill that is going to come before the Senate.

Mr. FISHER. Sir, I was asked to address certain issues relating to the financing, to the risks involved here, and I am most concerned. The purpose of my testimony is just to address those issues, those financing issues.

Senator EXON. So you do not have a position for the record with regard to granting eminent domain?

Mr. FISHER. No, I do not, sir, not on that issue alone.

Senator EXON. Now, in your responsibility as the director for strategic planning services for the industrial planning division of your company have you never made any projections as to how many pipelines would be in existence assuming a right of eminent domain as proposed in the bill and assuming that everything else falls in line so that investors would be attracted to coal slurry pipelines?

Mr. FISHER. No, sir.

Senator EXON. And therefore you have not made an estimate of what percentage of the coal would eventually be shifted to the coal slurry pipeline system?

Mr. FISHER. No, sir.

Senator EXON. Nor therefore have you made any determination as to how much water would be required for carrying the coal from one section of the country to another, which is a major concern of ours in my section of the country?

Mr. FISHER. I am sure it is, sir, but neither my firm nor I have addressed that issue.

Senator EXON. To your knowledge, has anyone done a study along the lines of my questioning?

Mr. FISHER. Not to my knowledge, sir.

Senator EXON. Thank you very much.

Senator DANFORTH. What you have done your research on is the types of financing that would be required to construct coal slurry pipelines, and your view, as I understand it, would be that they

would be the sort of contracts that would insulate the pipeline company and its investors from risks?

Mr. FISHER. Correct.

Senator DANFORTH. And that without such insulation from risk, it would probably not be economically feasible to construct any pipeline?

Mr. FISHER. Correct.

Senator DANFORTH. And that the effect of insulating the pipeline from risk would be at least twofold. One, the increased cost or the cost of bearing the risk would be passed on to the utility consumer, and second, insofar as long-term contracts are used by the pipeline transporting coal, the effect of that would be that we would freeze out the railroads.

Mr. FISHER. I agree with those statements.

Senator DANFORTH. Thank you very much.

Senator EXON. Mr. Chairman, let me just try and nail this down a bit more if I can.

Mr. Fisher, do you think it might be a good idea that before the Senate and Congress votes on this very important matter they have some information as to what the long-term effects of the pipeline would be as it affects not only rail but the whole transportation system? Do you think it would be a good idea if we had the information that my question suggests before we vote on this important matter?

Mr. FISHER. Absolutely.

Senator EXON. I hope that we can get that across to the Members of the Congress. Thank you very much.

Mr. FISHER. Thank you.

[The statement follows:]

STATEMENT OF KAREL V. FISHER, VICE PRESIDENT, TEKNEKRON, INC.

Mr. Chairman, my name is Karel V. Fisher. I am Vice President of Teknekron, Inc., a firm that provides professional consulting services in regard to the energy and transportation industries. My firm's headquarters are at 2118 Milvia Street, Berkeley, California 94704.

My educational background is in transportation management and finance, environmental planning, and philosophy. I hold a bachelor's degree from Occidental College and two master's degrees, one from the University of California at Berkeley and the other from Yale University.

Immediately prior to joining Teknekron six years ago, I was employed by the Institute of Business and Economic Research at the University of California, where I served as project director for a major assessment of the short-term and 20-year capital requirements and capital-raising prospects of U.S. electric utilities as a whole and of each California utility in particular. During this period I also served as an independent consultant to the California Energy Commission in an evaluation of the terms under which facilities associated with supplemental sources of natural gas could be financed.

Since joining Teknekron, I have been involved in over 100 coal-related research projects for 40 firms. The research has been conducted on behalf of current and would-be coal producers, coal transporters, and coal consumers.

I appreciate the opportunity to appear before you today to discuss issues that I believe need to be raised in connection with coal slurry pipelines.

I would like to preface my remarks by telling you that I have submitted testomony on these topics on an earlier occasion. That testimony was submitted to the Oklahoma Corporation Commission about a year ago, when the Commission was inviting comments on the application of Energy Transportation Systems, Inc. ("ETSI") for a license to transport coal by slurry pipeline within the state. My remarks dealt with certain matters regarding the economic feasibility of the proposed ETSI pipeline, because Oklahoma law requires that such applications demonstrate that the

proposed project make sense economically. I have submitted a copy of my testimony before the Oklahoma Commission to the Committee for its files.

For my previous testimony I was afforded the time to gather available information, perform some economic analyses, and consider the results. My basic conclusions were that, for Oklahoma utilities and their customers, the ETSI pipeline did not seem to make any sense whatsoever. As for investors, the pipeline appeared to be only marginally attractive under the best of circumstances. The "best of circumstances" included a variety of favorable conditions in terms of the cost of funds, tax provisions, and, above all, contractual arrangements between the pipeline sponsors and electric utilities in Oklahoma, Arkansas, and Louisiana.

In my work regarding the ESTI case, I uncovered a number of financing difficulties that I think will be associated with coal slurry pipelines in general. I shall sketch some of these difficulties and suggest that a way to avoid them is to stick with known entities: the existing underutilized modes of national coal transportation.

For any pipeline, I believe the sponsors—whom I presume would be the direct equity investors—would probably seek a special type of financing called "project financing". Project financing would permit the sponsors to separate the credit standing of the project from that of their firms. The creditworthiness of the project would then be evaluated by considering the collateral represented by (a) physical capital assets and (b) the projected earnings stream and (c) any assurances that might be offered to investors (both lenders and equity participants) regarding the recoverability of their investments in the project and their chances for realizing returns on those investments.

Unfortunately, in my view, neither the physical asset—the slurry pipeline itself—nor, at least in the case of ETSI, the projected earnings stream, really have much value. Thus, to increase the likelihod that sufficient financial capital be made available for a project the sponsors and potential lenders will have to secure iron-clad guarantees that all prudently incurred costs be recoverable in the pipeline contract. Such costs would include all capital investment, debt service, and operating costs. Since, to my knowledge, no pipeline sponsor has made public its specific contract provisions, I am unable to assess their reasonableness or their implications for utilities and electricity consumers. However, judging by the types of provisions that sponsors of other capital-intensive, energy-related projects have sought over the last few years, I would expect pipeline sponsors to seek a type of take-or-pay contract that would require consumers to immunize investors against the following risks:

Failure to complete the pipeline after the utility signs the contract. (This could be due to technical, financial, regulatory, or market considerations.)

Cost overruns after the utility signs the contract, despite any prior promises to the utility as to total capital costs.

Need for additional financing to complete the project if the above-mentioned cost overruns occur. If the way in which the financing of cost overruns is to be done is not structured prior to the occurrence of the overruns, the risk here will be significant.

Premature abandonment of pipeline service.

Inability to secure water supplies to begin coal slurry pipeline operation, or curtailment of water supplies later.

Placement of certain taxes on water usage, which would increase the cost of the water supplies.

Promulgation of more stringent standards for wastewater treatment, resulting in the need for additional capital to redesign existing facilities.

Problems in negotiating or renegotiating coal-supply contracts. Problems of negotiation may arise if, for example, the coal supplier is not willing to agree to a force *majeure* clause relating to the utility's possible inability to receive coal by pipeline. Problems of renegotiation may arise if, for example, the utility served only by pipeline finds that it cannot use the producer's coal without violating applicable air quality emission standards.

Possibility that the regulatory commission governing the utility will indicate that it no longer is willing to have the firm agree to a take-or-pay contract. If this regulatory view is expressed after pipeline construction has commenced, the risk of litigation will exist.

This appears to be an absurdly large burden for consumers to have to bear. The only alternative, it seems to me, would be federal loan guarantees. Whether guarantees of this type could be justified for the purpose of providing a select group of consumers with another transportaion mode is problematic.

Now, having looked at the pipeline risks and at who would probably have to bear them—ultimately, the eletricity consumer—let me turn to the risks that people

have customarily associated with the rail transportation of coal. These are, to begin with, unpredictable escalations in the cost of labor, fuel, and other factors. Prior to passage of the Staggers Act in 1980, some observers suggested that railroads would be saddled with more and more noncompensatory traffic and unproductive branch lines, pushing coal transportation costs upward at a rapid rate.

The Staggers Act mitigates these risks. Indeed, with this mitigation, rail transportation along with barge and truck movements should be able to satisfy the coal-shipment needs to be addressed by the Secretary of the Department of Energy as directed by the proposed Senate Bill 267.

The effect of the Staggers Act, put as succinctly as possible, has been to relax restrictions that heretofore have prevented the railroads from competing for long-term business. As a result of the Act, railroads can now enter into long-term contracts with their shippers, which vastly diminishes the chance of unpredictable increases in railroad costs. Furthermore, railroads are now permitted to rationalize both their traffic mix and their track systems, which should greatly reduce the extent to which the profitable traffic subsidizes the unprofitable. As these old impediments are toppling, the railroads' inherent strengths remain: an extensive track system is in place, costs are distributed over many commodities and many shippers, and even with the failure of one or more components, the system as a whole continues to function. In the case of pipelines, by contrast, the systems are not in place and the costs would be concentrated on one commodity and just a few shippers, and, of course, failure of one component could bring down the whole system.

In other words, the railroads along with the other currently operating modes should be able to handle the nation's coal transportation needs very adequately for the foreseeable future.

Senator DANFORTH. Thank you very much, Mr. Fisher.

The next witness is Mr. Rodgers.

STATEMENT OF PAUL RODGERS, ADMINISTRATIVE DIRECTOR AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY LINDA KENT, ASSISTANT DIRECTOR OF CONGRESSIONAL RELATIONS

Mr. RODGERS. Good morning, Mr. Chairman and Senator Exon. My name is Paul Rodgers. I am the administrative director and general counsel of the NARUC. I am accompanied today by Linda Kent of our staff.

I have a full statement, which I would appreciate your inserting in the record, and I have a very short summary to deliver orally.

I appreciate this opportunity to express the NARUC's support for legislation to grant Federal imminent domain authority to coal slurry pipelines. The issue is of particular interest to the NARUC since our members include those State officials who are charged with the responsibility of regulating investor-owned electric utility companies.

Vitally concerned as we are with the effect this legislation would have on electric utility rates, we firmly believe that granting pipelines Federal imminent domain authority will allow for increased competition in the coal transportation market, which will reduce electric utility fuel costs to the benefit of electricity ratepayers.

Currently, the majority of coal shippers who depend upon railroads for coal transportation are captive, in that there is no practical alternative to railroad transportation. As a result of this monopoly, there has been no incentive for the railroads to hold down coal transportation rates. Coal shipping costs are typically included in a utility's base cost of service and passed through to its captive customers or electric utility ratepayers. Greater competition, by forcing coal transporters to react to market forces, will translate into lower electric rates for consumers.

In order to insure that the rates charged by pipelines for the transportation of coal are in the public interest, the NARUC believes that any legislation should provide some form of oversight in regard to contractual arrangements between coal pipelines and shippers. As presently written, neither S. 267, the proposed Coal Distribution and Utilization Act, nor H.R. 1010, the proposed Coal Pipeline Act, permit any Federal or State review of coal pipeline contracts.

In order to avoid problems such as those created in the natural gas market by onerous contract provisions, as well as to protect shippers from becoming captive to pipelines, we believe that oversight of pipeline contracts is essential.

The association submits that the most effective means of contract oversight would be to allow the appropriate State agency, upon request, to review and approve any contract between a pipeline and a public utility prior to the effective date of the contract. While State regulatory agencies may indirectly review pipeline utility contracts during various rate proceedings, we feel that the contract review we propose will enable the States to utilize their expertise in insuring that the rates charged for the transportation of coal are fair to all interested parties without imposing any undue burdens on the operation of pipeline systems.

If the subcommittee is considering a provision endorsed by the House Public Works and Transportation Committee last year to provide for ICC approval of these contracts, we respectfully urge the subcommittee to include an amendment which the NARUC also offered last year. That amendment would require the ICC to refer a proposed contract to the appropriate State agency for comment before the ICC approves or disapproves the contract.

This will insure that the interests of both electric ratepayers and captive shippers are fully protected. The NARUC prefers the approach taken by the Senate measure as reported by the Committee on Energy and Natural Resources. We heartily endorse section 6 of the bill, which preserves the viability of State and local laws and regulations concerning the environmental and public safety aspects of interstate coal pipelines.

The NARUC supports various other provisions of S. 267 which preserve the authority of the State public utility commissions and their rate proceedings, insure that the States retain control over their precious water resources, and provide for public comment during the procedure for which pipelines are certified for imminent domain powers.

Implementation of coal pipeline distribution systems will enhance competition in transportation of coal, thus guaranteeing that the most economical rates are charged for coal transport. This will ultimately benefit ratepayers by holding down the delivered price of coal to electric utilities. We look forward to the passage of this important legislation with the modifications we have suggested.

Thank you for your attention, sir.

Senator DANFORTH. Thank you very much, Mr. Rodgers.

Your view is that with respect to certifying whether or not a pipeline is in the national interest, that certification should be made by the ICC, and not the Department of Energy?

Mr. RODGERS. No, sir. I think the Department of Energy—what we are talking about was that, that is, if this committee was interested in the House provision, we understand House Public Works is again going to support ICC review. If that is your preference, we want the State role worked in. We are perfectly satisfied with the Senate bill, where the national interest determination will be made by the Secretary of Energy.

Senator DANFORTH. I see, so either or, as far as you are concerned.

Mr. RODGERS. Yes, I think the Secretary of Energy would be a better forum to place this jurisdiction in.

Senator DANFORTH. Now, let us suppose that the certification is by the Secretary of Energy. Then should the States play any role?

Mr. RODGERS. We think the State commissions should play a role in any event, because they are the ones there to represent the electric ratepayers, and they have a different perspective, it seems to me, than the Secretary of Energy would have. The Secretary of Energy would look at it from a national perspective, and of course the State regulatory commissions would look at it from the perspective of their electric utility ratepayers. So we think both are important, and both approvals should be required.

Senator DANFORTH. Approval or comment?

Mr. RODGERS. We would prefer approval, of course.

Senator DANFORTH. And what would be the effect of a disapproval?

Mr. RODGERS. Well, I would think that the coal slurry pipeline would not then go forward as concerning the State involved, because where it is feasible to construct a coal pipeline, there are going to be substantial economic consequences visited upon the ratepayers of the electric utilities, and I do not think it should go forward if the State commission is opposed. In fact, I would think under existing law the State commission could discourage a project by refusing to let these costs be passed along to the ratepayers.

The previous witness, Mr. Fisher, outlined in very great detail all of the very substantial financial problems which are going to have to be reckoned with before we can build one of these, and obviously, to build one it is going to have to come in at significantly less cost than what the railroads can continue to transport the coal for.

Senator DANFORTH. What criteria would the State commission use in determining whether or not it would approve a pipeline?

Mr. RODGERS. I think the bottom line criteria would be if this pipeline, and it was clear from the contractual provisions, had the very definite likelihood of producing less expensive coal transportation than continuing to rely upon the railroads. I think that would be the bottom line criteria, sir.

Senator DANFORTH. Now, I would like you to comment on the concept of vertical integration if you would. As I understand vertical integration in this area, it is the notion that a utility might own either the delivery system or a coal mine or both. Do you see any problem with vertical integration?

Mr. RODGERS. I think there is always a problem with vertical integration, and, of course, under the Senate bill there is a requirement for antitrust review by the U.S. Department of Justice. I think that is a substantial protection from the standpoint of the

antitrust laws. I think that any time that there is a vertical integration, there are problems there, and of course a State commission, if it can ferret out any excess costs, it can refuse to have those passed along. I share your apparent concern with such arrangements.

Now, there is nothing in this legislation as I read it that requires vertical integration, but it is my general impression in most cases the utilities would be dealing with an unrelated entity to obtain coal transportation, although that is not prohibited, as I understand it, but I think this is something that is well to leave to administrative discretion.

Senator DANFORTH. Do you mean whether or not to prohibit it?

Mr. RODGERS. Or to permit it. In some cases it might make sense, but anyway, in order for this to happen, it seems to me that under the Senate legislation, it has to be approved by the Secretary of Energy. It would have to pass muster by the U.S. Department of Justice under the antitrust laws, and hopefully it would have to pass muster by the State regulatory commission.

So, it seems to me there are ample public safeguards in the Senate legislation.

Senator DANFORTH. Is it difficult for a utility commission to regulate that part of the price that is passed on by a transportation system?

Mr. RODGERS. In theory, no, but as a practical matter, you could have difficulty in getting as accurate information as you would like, because obviously there is a matter there of piercing the veil to determine the true costs. Now, of course, we are involved in things like that. You have had instances in the past whereby utilities have owned coal companies, and frequently that has worked to the utility's benefit, and, of course, the usual rule there is not to pass on to the ratepayer any higher price for coal than what the utility could obtain from third parties.

So, in theory, the State commissions have full jurisdiction, and hopefully that can be carried out, assuming they could get the accurate information. We would hope they would obtain that. But I agree with what your inference is, Senator; that is, this vertical integration does present regulatory problems, and it requires a greater alertness by the regulatory agency.

Senator DANFORTH. Thank you very much, Mr. Rodgers.

Mr. RODGERS. Thank you, sir.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and Distinguished Members of the Subcommittee: My name is Paul Rodgers and I am Administrative Director and General Counsel of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today is Linda Kent, NARUC Assistant Director of Congressional Relations.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the 50 States, the District of Columbia, Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America.

The Association appreciates this opportunity to express our members' views on coal slurry pipeline issues. This subject is of particular interest to the Associatiion

since our members include those State officials who are charged with the responsibility of regulating investor-owned electric utility companies within their respective jurisdiction.[1] The NARUC is vitally concerned with the effect that coal slurry transportation will have on electric utility rates.

THE NARUC POSITION

At its Summer Meeting held in Seattle, Wash., July 28–29, 1982, the NARUC Executive Committee, the policy-making body of the Association, endorsed the concept of granting the Federal power of eminent domain to interstate coal pipeline systems in order to facilitate the national distribution and utilization of domestic coal. We firmly believe that increased competition in coal transportation, by reducing electric utility fuel costs, will benefit the ratepayers whose interests our members must protect.

Currently, the majority of coal transported in this country is captive to the railroads with no competitive alternatives to hold transportation rates down. The cost of moving coal has increased dramatically and much of the impact of these increases has been borne by utility ratepayers.

The NARUC submits that the development of interstate coal pipelines will provide the necessary incentive to encourage lower transportation costs by enhancing competition in the coal transportation market. These savings will result in lower utility rates and, ultimately, in beneficial savings to ratepayers. For these reasons, we are pleased that legislation to provide for the implementation of coal pipeline distribution systems has been introduced in both houses of Congress, and we support various provisions contained in H.R. 1010, the proposed Coal Pipeline Act, and in S. 267, the proposed Coal Distribution and Utilization Act of 1983.

The NARUC prefers the approach taken by the Senate measure as reported by the Committee on Energy and Natural Resources. We heartily endorse section 6 of the bill, which preserves the viability of State and local laws and regulations concerning the environmental and public safety aspects of interstate coal pipelines. However, we would suggest that any legislation enacted by Congress expressly provide State regulatory commissions with an oversight role in regard to the contractual arrangements between coal pipelines and electric utilities. Such an addition would maintain the advantages of competition without sacrificing ratepayer protections. The remainder of my testimony will detail our concerns and suggest a possible amendment to accommodate them within the context of S. 267 as reported.

THE IMPLEMENTATION OF INTERSTATE COAL DISTRIBUTION SYSTEMS

While transportation of coal can be provided by different types of carriers, railroads transport approximately 65 percent of the total coal produced. The majority of shippers who depend on the railroads are "captive" in that there is no practical alternative to railroad transportation for them. As a result of this monopoly on coal shipments, there has been no incentive for the railroads to hold down transportation costs.

In the case of electric utilities, this lack of transport competition precludes them from bargaining for lower costs in their contracts with rail carriers. Coal shipping rates thus imposed on the utilities by the railroads are included in the utilities' base cost of service and typically passed through to consumers.

The NARUC has endorsed the concept of coal slurry pipelines as an effective, alternative means of moving coal. We believe that providing greater competition in the coal transportation market will translate into lower electric rates, since it will compel coal haulers to react to market forces.

The Association believes that it is essential for interstate pipelines to be constructed and that the granting of Federal eminent domain authority is the most efficient way to initiate the process. Pipeline construction has been thwarted in the past by the refusal of railroad companies to allow pipelines to cross railroad rights-of-way. In addition, railroads have fiercely opposed legislation to grant eminent domain authority to aid pipelines in acquiring the necessary right-of-way for construction. Railroads have had this power since their inception. We agree with the sponsors of current legislation that in order to foster competition, all transportation companies should be allowed to enter the market on an equal basis.

This does not mean that certification, by which pipelines are granted Federal eminent domain authority, should be summarily granted or that the States should not

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[1] Nebraska is the only State which does not regulate electric utilities, all of which are owned or regulated by public power districts and municipal governments within its borders.

be encouraged to participate in the process to the fullest extent possible. We are pleased that both H.R. 1010 and S. 267 contain provisions to allow the States to comment prior to the authorization of Federal eminent domain power. This will allow the States the opportunity to offer the benefit of their expertise on how the operation of a coal pipeline system will affect their residents.

THE STATE ROLE IN THE PROTECTION OF PUBLIC UTILITY RATEPAYERS

As I stated earlier, the primary objective of the NARUC is to protect the interests of consumers by improving the quality of government regulation. In keeping with this objective, we believe that the States must be given the opportunity to ensure that the rates for the transportation of coal charged by coal pipelines will be in the public interest.

As presently written, neither the House nor Senate coal pipeline proposals permit any Federal or State regulatory oversight of coal pipeline contracts. We at the NARUC have viewed with alarm the problems that have been created in the natural gas market through long-term contracts with onerous take-or-pay provisions, indefinite price escalators, and most-favored-nation clauses in producer/pipeline contracts. The Federal Energy Regulatory Commission (FERC) believes that it does not have the proper statutory authority to remedy problems resulting from such contract provisions, despite widespread agreement that those provisions severely hurt gas consumers. We believe that any coal slurry legislation should contain some means for contract review to help protect utilities from troublesome long-term contract provisions.

The NARUC avers that the most effective avenue to protect captive shippers and to afford meaningful ratepayer protections is to allow the appropriate State regulatory authority, upon request, to review and approve any contract between a pipeline carrier and a public utility prior to the effective date of the contract. This modification would ensure that the States are allowed meaninguful input into the determination of rates charged by pipeline distribution systems without imposing any undue burden on the development or operation of interstate pipelines.

Currently, most State commissions have opportunities to indirectly control the rates charged utilities for the transportation of coal. In rate case proceedings, State commissions review utility expenses which constitute a utility's cost of service, so as to ensure that the costs recovered from ratepayers are fair and reasonable. Therefore, State regulatory commissions will continue to be involved in the indirect review of electric utility/coal carrier contracts. However, this review alone will not adequately protect the utility, and ultimately its ratepayers, from the risks of long-term contract provisions in the face of unforeseen market changes and dislocations.

In addition, to the extent that the cost of coal transportation represents a component of the delivered cost of fuel, utilities may attempt to pass the cost through to ratepayers under automatic fuel adjustment clauses. However, these clauses have been viewed with increasing skepticism by State legislators, consumers, and others. Twenty-two States require some kind of commission review of costs which are included under these clauses (see Appendix),[2] and legislation has been introduced in 15 States which would restrict or prohibit automatic adjustment provisions.[3] While tighter scrutiny of fuel adjustment clauses will provide some review of pipeline rates, the NARUC does not believe that this type of review is sufficient.

It must be pointed out that the danger exists that electric utilities may become captive to coal pipeline carriers when coal slurry legislation is approved. Coal pipeline carrier costs are projected to be substantially below those of the railroads. As a result, pipelines may be able to capture coal shippers by undercutting rail rates. In the case of electric utilities whose ratepayers are already severely overburdened by the high cost of energy, without significant State oversight, coal pipelines could capture the utility's business and make undue profits at the expense of consumers.

State review of pipeline/utility contracts will allow the commissions to exercise their expertise in determining whether proffered contracts are fair to utilities and their captive customers—electricity ratepayers. We strongly recommend that such a provision be included in the final bill.[4]

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[2] The appendix was not reproducible and is in the committee files.

[3] The 15 States in which fuel adjustment clause legislation is pending are: Arkansas, California, Delaware, Illinois, Indiana, Iowa, Kansas, Massachusetts, New York, Ohio, Pennsylvania, South Carolina, Texas, Utah, and Wisconsin.

[4] This amendment may be made to S. 267 by adding a new section 12 containing the following language: "A contract entered into pursuant to this section between a coal pipeline carrier and a public utility shall, upon the request of the State regulatory agency exercising ratemaking

Continued

The Association is aware that the House Subcommittee on Surface Transportation of the Public Works and Transportation Committee is considering a provision similar to one endorsed by that Committee last year to provide for Interstate Commerce Commission (ICC) approval of pipeline/shipper contracts. We have articulated the reasons why some form of contract review is important, and we certainly would not oppose such a provision. However, we respectfully cautioned the Subcommittee during a hearing held on March 25, 1983 to carefully structure its proposed guidelines for ICC contract review.

Part of the urgency with which coal shippers view the need for slurry pipeline legislation stems from their dissatisfaction with ICC oversight of the rates charged by the railroads to transport coal. Many believe that the ICC has sacrificed captive shipper protections in its implementation of the Staggers Rail Act.

Recognizing that, due to the absence of competitive traffic, captive shippers need protection from excessive rail transportation charges, Congress fashioned the Staggers Act so as to provide for continued regulation of railroad market dominant (captive) traffic. However, the ICC has been criticized for allowing the railroads to set their own rates without adequate scrutiny to ensure that these rates are reasonable. As mentioned earlier, the lack of real bargaining power on the part of captive shippers, due to the absence of competition, provides no incentive for railroads to keep rates low. Ultimately, the erosion of captive shipper protections adversely impacts on consumers.

We suggest that if an ICC contract review scheme is proposed, language also should be included to ensure that State commissions are given the explicit opportunity to review pipeline/utility contracts before they take effect. Such an amendment would require the ICC to refer proposed contracts between pipeline carriers and public utilities to the appropriate State agency for comment prior to ICC approval or disapproval of the contract.[5] This will ensure that the ratepayers' interests are fully protected and will provide the benefit of the States' expertise to the Commission.

The NARUC strongly endorses the provisions contained in section 8 of S. 267 which would ensure the continuing jurisdiction of State public utility commissions to exercise ratemaking authority over electric utilities. This section is important in that it will protect the ability of State commissions to explore all the pertinent issues in various rate proceedings and will assure those agencies the freedom to permit or deny passthrough of coal pipeline costs to consumers as they see fit.

PUBLIC SAFETY

Recognizing that safe management of coal pipeline facilities, including the construction, operation and maintenance of the various components of the system, is of concern to both State and Federal governments, the NARUC agrees with the intent of section 6 of S. 267 that all safety regulation should be left to the States for disposition in the exercise of their inherent safety authority (except if the application of State law proves to be discriminatory).

Safety measures are more effective when developed and implemented by those officials who are in the best position to assess the unique requirements of a particular locality. The language contained in section 6 will preserve the continued application of essential safety requirements free of the often inflexible character of Federal regulation.

CONCLUSION

The NARUC heartily endorses the passage of legislation during the 98th Congress to allow the right of Federal eminent domain authority for interstate coal pipeline distribution systems.

We feel that sections contained in the various measures currently under consideration to require that any water used by coal pipelines be acquired in compliance

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authority over said public utility, be submitted to the State regulatory agency for review and approval prior to such contract becoming effective. The State regulatory agency shall have 60 days from the date on which the contract is submitted to take final action with respect to the contract."

[5] This amendment may be made by including the following language: "Within 10 days of the date that a contract between a coal pipeline carrier and a public utility is filed, the Commission shall furnish a copy of such contract to the State regulatory agency exercising ratemaking authority over the contracting utility. Not later than 60 days after the contract is provided, the State agency may submit to the Commission comments on the contract, which may include recommendations that the contract be approved or disapproved."

with State water laws are especially praiseworthy. These issues are of particular importance to western States, and we agree that the States' authority over precious water resources must be preserved.

However, in order to assure an effective State role without undue regulation, the NARUC would urge the inclusion of a provision to allow State commission review of pipeline/utility contracts to ensure that the interests of consumers are preserved.

Implementation of coal pipeline distribution systems will enhance competition in the transportation of coal, thus guaranteeing that the most economical rates are charged for coal haulage. The NARUC firmly believes that this will ultimately benefit ratepayers by holding down the delivered price of coal to electric generating facilities. We look forward to the expeditious consideration of this important legislation.

Thank you for your attention.

Senator DANFORTH. That concludes the hearing.

[Whereupon, at 11:20 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of American Trucking Associations, Inc.

The American Trucking Associations, Inc. (ATA)—the national organization representing the motor carrier industry including for-hire and private, intercity and urban trucking companies—supports coal slurry pipelines and their right to eminent domain to cross federal and private lands and railroad right-of-way.

The ATA policy is based upon the belief that increased utilization of the Nation's vast resources of coal is needed if we are to reduce our dependence upon imported oil. ATA believes that future demand for coal for electrical generation and industrial boiler use and the development of synthethic fuel production using coal as a feedstock will provide the markets for increased coal production.

Yet as the nation's premier freight mover, the American trucking industry knows that transportation provides the essential link between production and demand. If the transportation link is weak, then the entire coal energy chain will be weak. Unfortunately, the coal energy chain is weak because of an overdependence on one mode.

Coal slurry pipelines (CSPs) provide an alternative method to the railroads for moving coal long distances. Transporting coal by pipeline offers the same economic and other advantages that pipeline transport affords for oil and gas. One can expect that construction of long distance pipelines of economical, reliable and continuous transport of coal will contribute to the demand for coal, just as earlier pipelines did for oil and gas demand.

Not only are CSPs a means to stimulate increased domestic and foreign use of America's coal, but also they will reduce transportation's demand for petroleum-based fuel. CSPs are powered by electricity which can be generated by the very coal they transport, while all other modes—barge, rail, truck—require diesel fuel. For example, the only currently operating CSP is Black Mesa, operated by the Southern Pacific Company which owns Southern Pacific Railroad between Northeast Arizona and Southern Nevada, which moves over 1.3 billion ton-miles annually. Had the same amount of coal been moved by rail, over 4.4. million gallons of diesel would have been used.[1] Nine proposed pipelines [2] will transport over 103.2 billion ton-miles annually. The railroads would need over 344 million gallons of diesel to transport the same ton-miles. Three hundred forty-four million gallons of diesel would heat almost 290,000 homes [3] or all the homes in Louisville, Kentucky or Rochester, New York.

Unfortunately, development of CSP's has been delayed not because of technological or financial problems. Rather, development has been delayed because the now dominant mode in coal transportation—the railroads—fear the competition that would result if CSP's were built. In the new world of "free market" solutions, the railroad's arguments are sorely out-of-date. Moreover, the railroads would deny to competition one of the basic rights they themselves enjoy: The right of eminent domain.

The railroads acknowledge they are fighting CSP's because they will "deprive' them of operating revenue and that it will "superimpose a redundant transportation system." [4] Yet all competition is based upon so-called "redundant" systems, whether those systems are Pepsi Cola versus Coca Cola; digital versus Accutron watches; or network versus public television. Railroads enjoy no special right which protects them from competition for any or all commodities they transport.

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[1] Based upon 300 ton-miles per gallon for a long-haul unit coal train.

[2] Allen-Warner Valley, Pacific Bulk, NICES, San Marco, Texas Eastern, ETSI, Coalstream, VEPCO and Ohio.

[3] Based on 1,200 gallons per homes.

[4] Statement by the Association of American Railroads' President William H. Dempsey, before Public Works and Transportation Committee, House of Representatives, Hearings on Coal Pipeline Carriers, November 8, 9, 22, 1979, p. 265-270.

Ironically, based upon data from a recent Departments of Transportation and Energy study, even with CSPs, railroads will haul approximately one billion tons of coal in 1990, up 84 percent from 520 million carried in 1980.[5] Moreover, they will maintain the current market share of 63-65 percent. All existing and presently proposed CSPs will handle only 170 million tons—slightly more than 11 percent of the total.

Finally, railroad's demands for protection from competition ring particularly hollow given the regulatory reform of the Staggers Rail Act of 1980 to help their revenue structure. With this Act, railroads can no longer justify their differential pricing, under which they try to maintain total revenues by charging higher rates for less competitive traffic, such as coal, and lower rates on traffic where there is effective competition from other modes such as motor carriers.[6]

The overriding issue is whether the railroad industry will be allowed to continue preventing competition from coal pipelines which, in many cases, can provide a more reliable, environmentally safe, and more economical method of coal hauling. Continued delay in development of coal pipelines will inevitably weaken the total transportation link in the new coal energy chain.

In conclusion, what is good for the Nation's railroads is not necessarily good for transportation. Moreover, what is good for the railroads may not be in the best interest of the Nation's energy policy. Competition in the energy distribution system is essential for a sound energy policy. Continued delay in the development of coal pipelines will inevitably weaken the transportation link in the new coal energy chain. Therefore, the ATA support coal slurry pipelines in their efforts to achieve eminent domain legislation which will help them to open up vast coal reserves and act to exert competitive discipline over rail coal rates.

STATEMENT OF WARREN R. NEUFELD, SECRETARY, DEPARTMENT OF WATER AND NATURAL RESOURCES, STATE OF SOUTH DAKOTA

Mr. Chairman and members of the Subcommitee, my name is Warren R. (Bob) Neufeld, Secretary of the South Dakota Department of Water and Natural Resources. The State of South Dakota has a strong interest in S. 267 considering that we are involved in the Energy Transportation System, Inc. (ETSI) coal slurry pipeline project. Nevertheless, we are not advocating a position in favor of or in opposition to S. 267 or the grant of federal eminent domain powers to coal slurry pipelines. There are several issues related to this legislation, however, which beg our comment and deserve your consideration.

In particular, I wish to address the following: 1) the inaccurate opinions and ill-founded objections raised by several Missouri River downstream states (Iowa, Nebraska and Missouri) concerning South Dakota's involvement in the ETSI coal slurry pipeline project; 2) the protection of states' rights with respect to water allocation and coal slurry development; and 3) the impact of coal slurry pipelines on the cost of shipping grain by rail out of South Dakota.

Downstream concerns.—The states of Iowa, Nebraska and Missouri have argued that development of the ETSI coal slurry pipeline will have a detrimental impact on Missouri River downstream consumptive uses, set a dangerous precedent by allowing an interbasin water transfer, and violate the provisions of the Flood Control Act of 1944. The facts of the situation, however, clearly refute these arguments and shed a different light on the position of the downstream states. These facts are included in the testimony I presented last March to the Senate Energy and Natural Resources Committee during hearings on S. 267. (See attached.)

If the downstream states could document the alleged detrimental impact of the ETSI pipeline, their concerns would have much greater credibility. To date, however, such documentation has not been produced. State officials with the Missouri Departments of Natural Resources and Conservation recently admitted that no specific detrimental impacts have been identified in conjunciton with the ETSI project.

Missouri officials have estimated that the average annual flow of the Missouri River at St. Joseph, Missouri (in the northwestern part of the state) is approximately 26 million acre feet. At Jefferson City, Missouri (in the central part of the state), the Missouri River average annual flow is approximately 50 million acre feet. Missouri officials have also indicated that the flow of the Missouri River increases between Jefferson City and the point at which the river leaves the State of Missouri.

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[5] "National Energy Transportation Study", Departments of Transportation and Energy, 1980.
[6] Statement by Frank N. Wilner, Director of Waterway Studies, Association of American Railroads, as reported in Traffic World, May 18, 1981, p. 42.

Since the Missouri River states have estimated that an average annual flow of 4.3 million acre feet is sufficient for downstream consumptive uses save for the subordinate navigation function, and since the ETSI pipeline will only divert 50,000 acre feet per year, the State of Missouri could hardly claim that ETSI development will have a detrimental impact on their consumptive use of the Missouri River.

We also find it difficult to understand Missouri's concerns about any reduction in Missouri River water supplies caused by coal slurry development when the State of Missouri has not even established any authority or permit program to govern the use of water from the Missouri River or any other body of water in the state. If an individual, a corporation or a municipality wants to increase usage of water in the State of Missouri, the only limitations that apply in the state are basic riparian law with no state control. In fact, three years ago was the first time the State of Missouri ever prevented any entity private or public, from using any quantity of water within the state. This limitation was applied to the withdrawal of water from the James River at Springfield, Missouri (in the southwest corner of the state) which is not part of the Missouri River basin.

The State of Missouri's control or supervision of water usage is so limited that state officials are not able to estimate the number of acre feet diverted from the Missouri River within the state during 1982 for agricultural or industrial purposes. The State of Missouri keeps no record of the amount of water diverted or requested to be diverted from the Missouri River on an annual basis. If an individual or some other party in a neighboring state such as Nebraska diverted 20,000 acre feet from the Missouri River, officials of the State of Missouri admit that they would not be able to measure the diminishment of the river flow through the State of Missouri. The State of Missouri does not even have a current state water plan for future use, and the last state water plan was prepared in the 1930's.

As incredible as it may seem, Missouri officials even admit that they do not have any studies to support or affirm that the usage of water from within the State of South Dakota for the ETSI pipeline will have any environmental harm on the State of Missouri. In fact, the State of Missouri has not conducted any study of any type concerning the water diversion by ETSI in South Dakota for a coal slurry pipeline. The State of Missouri has now initiated such a study, but it should be noted that this effort was initiated after the fact, i.e., after the State took legal action to halt ETSI development on the basis that, among other charges, such development would have a detrimental impact on water and related resources in the State of Missouri.

Missouri officials have clearly stated that their position is one of concern over the cumulative impacts of what appear to be small, insignificant diversions. This position certainly suggests that ETSI itself poses no threat to the State of Missouri, but nevertheless the state has decided to oppose ETSI because they have simply linked ETSI with some future unknown development that may have detrimental impact. Such guilt by association with the unknown can hardly be considered fair by any reasonable individual. This is especially true since the entire projected national coal production for 1985 (985 million tons) could be transported to market by coal slurry pipelines with Missouri River water and the difference in the average discharge at the Oahe Dam in South Dakota would be undetectable.

At the same time that the State of Missouri has expressed concern about cumulative future impacts, however, the state has failed to address the impacts of real and present activities. The Missouri Department of Conservation, which is responsible for protecting fish and wildlife resources in the state, has not conducted any studies or research on the environmental effects of underground oil and gas pipelines which exist in the state, on coal trains which pass through the state, or on the dumping of pollutants and sewage generated within the state into the Missouri River. The Missouri Department of Conservation has not even established permits or some other limits on the usage of water in the state even though the Department admittedly recognizes such permitting would be of assistance in protecting the natural environment of the state.

The point should be abundantly clear: The State of Missouri has opposed ETSI development even though it has yet to document any of its claims regarding the alleged detrimental impact on the water resources and environment of the state. In fact, Missouri has not and cannot control water resources usage within its own state boundaries, and does not even have a current state water plan to guide water resources management and development. It is obvious that Missouri's concerns and actions in opposition to ETSI are totally ill-founded and without merit.

State water rights.—It is the position of the State of South Dakota that the current language in S. 267 adequately protects state water rights to the greatest extent possible without infringing upon the flexibility necessary to secure future development. The legislation, as currently drafted correctly insures that the states may

permit uses of their water within the general framework of Western water law and the laws governing the allocation of water among the states.

Although the suggestion has been made that some form of state veto power or some other protective measures should be included in S. 267, particularly when an interstate river or stream is involved, such measures should be viewed with great scrutiny. The ETSI coal slurry pipeline issue has already demonstrated what obstructionist oriented businesses, individuals and states can do to prevent necessary development. A veto provision or some other measure requiring group action by the states will simply further stymie valuable investments in America's future development. It is time that the trend toward restricting growth and development in this country should be turned around. Admittedly, there are risks attendant upon the use of our resources in a relatively free, competitive environment. The safeguards currently built into the law regarding the equitable apportionment of waters and the various environmental protection statutes now in existence, however, are more than adequate to prevent any truly harmful and inequitable development proposals.

Grain shipment.—A number of agricultural groups have argued that granting eminent domain authority for coal slurry pipelines will result in increased costs for shipping grain by railroad. The concern is simply that with less coal to ship by railroad due to the competition from coal slurry pipelines, the railroads will have to charge more to ship farm products to recover their financial losses. In fact, certain agricultural interests have quoted Robert Blanchette, former administrator of the Federal Railroad Administration, as saying during Senate Surface Transportation Subcommittee hearings last year that coal slurry pipelines could force grain shipment costs to increase up to 40 percent in states such as South Dakota. The Senate Subcommittee hearing record, however, clearly indicates that Mr. Blanchette made no statement indicating that coal slurry pipelines would increase grain shipment rates in South Dakota by 40 percent. During the hearing, South Dakota Senator Larry Pressler asked Mr. Blanchette the following question: "If coal slurry pipelines were operating tomorrow under present economic conditions, what would it cost per bushel to ship grain out of South Dakota?" Mr. Blanchette responded, in part, that "Because grain rates are sensitive to many factors, it is impossible to project how this revenue loss (reduction in coal shipment by rail) would be reflected in South Dakota grain rates." Mr. Blanchette also said that coal slurry pipelines can be both pro-competitive and anti-competitive depending on the circumstances.

The point is that we have no conclusive evidence on the economic impact of coal slurry pipelines in South Dakota or anywhere else in the country. Economic analysis is always based on subjective assumptions, and different assumptions will always give you different results. We should not determine national policy based on misleading concerns, statements and analysis.

STATEMENT OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

The Associated General Contractors of America (AGC) represents more than 32,000 firms including 8,500 of America's leading general contracting companies which are responsible for the employment of more than 3,500,000 employees. These member contractors perform more than 80 percent of America's contract construction of buildings, highways, bridges, tunnels, dams, waste-water treatment facilities, transmission lines, refineries, among many other industrial and municipal-utility facilities.

AGC supports the enactment of legislation which will provide federal eminent domain for coal slurry pipelines, while providing for compliance with substantive and procedural law of the states relating to control, appropriation, use, disposal or distribution of water and the protection and enforcement of water rights. We believe that passage of S. 267 will accomplish this goal while providing safeguards to accommodate the concerns that have been expressed relative to permitting this process.

Pipelines are significant in that they permit the efficient movement of specialized products. The pipeline influence is especially dominant in the petroleum field where a pipeline's economic efficiency to transport crude oil and refined products is evident.

Other industries also use the pipeline system to varying degrees. They include coal slurry, fertilizer, natural gas and some agricultural products. The importance of transporting energy-related and energy-consuming products by pipe is found in its high level of efficiency in the movement of petroleum and natural gas products. Private firms are now willing to invest their capital toward the development of coal

slurry pipelines, and AGC believes this effort should be supported by the enactment of S. 267.

In view of the willingness to invest by private firms, AGC believes that the effort to develop coal slurry pipelines, on an expedited basis, is a desirable national goal and one which will stimultate the economy. This private investment will not place the funds of the federal government at risk. There are no federal appropriations required. There are no federal loan guarantees involved. There are no federal price supports for the coal that is delivered. The development of these coal slurry pipelines will be pure private entrepreneurship—but they can only be developed if they are provided a federal eminent domain process.

With enactment of S. 267, not only will a new industry be given the opportunity to be developed with its inherent creation of employment opportunities, but the construction of the pipelines themselves will generate additional employment opportunities for construction firms. With current unemployment in the construction industry at 25 percent of the work force, such employment opportunities will be greatly welcomed.

The sponsors of these pipelines have estimated that construction of the seven coal slurry pipelines under consideration will cost an estimated $12 billion. Based upon data generated by the Department of Labor's Bureau of Labor Statistics, the Department of Transportation and the Council of State Planning Agencies, each "on-site" construction job created by an expanded construction market generates an equal number of "off-site" jobs and induces nearly three times that number by corporate expenditures and the spending and respending of wages.

"On-site" is labor at the construction site. "Off-site" is labor required to manufacture, sell and transport the materials, equipment and supplies used in the construction industry. "Induced" is labor generated by the spending and respending of wages and profits. It is also the most difficult category to quantify, yet even the rudimentary approach reveals a significant economic effect.

A composite equation based on these data indicates that spending $1 billion on federal-aid highway construction would produce the following jobs: 13,100 on-site jobs; 13,200 off-site jobs and 36,700 induced jobs for a total of 63,000 new jobs. The Bureau of Labor Statistics (BLS) has generated data for each of the three other categories of non-residential construction—municipal-utilities, heavy-industrial and commercial building. Since pipeline construction employs elements of each of these types of construction, use of the averages for all activities of construction is reasonable in determining how much employment would be generated by each $1 billion in construction 10,900 "on-site" jobs are created, 13,325 "off-site" jobs, and 32,050 induced jobs. Consequently, it is estimated that approximately 130,000 new "on-site" jobs and approximately 160,000 new "off-site" jobs will be created by the construction volume contemplated by the seven coal slurry pipelines. In addition, the investment of $12 billion in private capital will also create 380,000 "induced" jobs, for a total of 670,000 jobs which will be created by the construction of the seven coal slurry pipelines under consideration.

We emphasize that these new employment opportunities will be created with no financial risk to the federal government.

In view of the safeguards in S. 267 to accommodate all interests and in view of the economic benefits provided by the development and construction of coal slurry pipelines, AGC urges enactment of S. 267.

Statement of National Cattlemen's Association, Public Lands Council, National Wool Growers Association

Mr. Chairman: The National Cattlemen's Association, the Public Lands Council, and the National Wool Growers Association are opposed to legislation delegating federal powers of eminent domain to builders of coal slurry pipelines.

The bill before this committee provides private interests with the federal power of eminent domain so that these companies need not be discomforted by the wishes of the landowners and the states that their lines cross. The argument that this benevolence towards pipeline builders would be helpful to consumer is fallacious; in the end, it would increase consumer costs.

EMINENT DOMAIN

This legislation expropriates the rights of the states to grant eminent domain for the construction of slurry pipelines. As such, it is a direct attack upon state sovereignty. The issue in this legislation is not just whether eminent domain should be exercised but who should grant it.

Moreover, this bill transfers the eminent domain power to private companies. Under this bill, it would be the private companies who will determine which routes are in the "public interest."

With eminent domain power, however, a coal slurry pipeline company would have one main goal: the construction of a pipeline at the least cost possible. Such a company would not be concerned about the economic welfare or plans of the landowners and other citizens of the state. It would be simply looking for the shortest, most technically-feasible route. A pipeline company would have no incentive to consider the effects of its actions on future property uses or development (including agricultural uses) and it would not be particularly concerned with the desires of the states involved.

We believe that this legislation is an abrogation of the rights of the individual states to make their own land use and resource decsions. Government is best when it is closest to the people affected. This bill is a clear attempt to construct a chasm between the people affected and what purports to be a "public action" ostensibly in the public's own "best interest." In other words, the people can't be trusted to make their own choices.

Perhaps the agrument that federal intervention is needed bears closer security. If such pipelines have no detrimental effects, why couldn't they be built under existing law? If pipelines cause no difficulties for landowners why wouldn't right of ways be obtainable even without eminent domain? Of if pipelines are simply another means of transporting coal—one that is efficient and environmentally sound—why wouldn't the states with coal resources be interested in providing eminent domain if necessary?

WATER RIGHTS

Perhaps one reason some states might not is the effect of coal slurry pipelines on a state's water resources. Under present law, a state would take into account it water needs when considering a request from a coal slurry pipeline company for eminent domain action. A state would feel compelled to consider all effects that a coal slurry pipeline might have.

It is clear to us that this legislation is an attempt to take away the states' rights to control water. In view of recent court decisions which nullified state water export laws, a state would certainly be hampered in denying water rights to pipeline companies.

The pipeline would use immense amounts of water. Most of the coal slurry pipelines now contemplated would take water from areas where water is now scarce and valuable. In effect, the pipelines would divert water from agriculture and other uses to the transportation of coal and do so even though there are alternative means of transporting such a commodity.

Water is our most precious resource. There are numerous studies indicating that our water tables are dropping and that we are facing shortages with severe impacts upon agriculture and other uses. Does it make any sense to use water for transportation if that results in higher food proces, higher costs to water consumers, and increased government expenditures on water supply measures?

We find it inconsistent to be considering the export of water out of water-short areas via coal slurry pipelines while at the same time consideration is being given to the expenditure of billions of federal dollars to transport water into these same areas.

INCREASED COSTS OF SHIPPING

Coal slurry pipelines are not common carriers. It would transport only one thing: coal (and water). By diverting coal from the railroads, it would increase the rail costs of transporting other products including agricultural products. If the slurry pipelines skim off the high-volume, most profitable traffic, then other rates are bound to go up, particularly considering the fixed costs that the railroads have. The Office of Technology Assessment has concluded that there is sufficient rail capacity to keep up with coal production. In the end, this legislation will enrich the pipeline builders at the expense of the farmer, the rail shipper, and, most important, the American consumer.

We urge this committee to reject this legislation.

NATIONAL FARMERS ORGANIZATION,
Washington, D.C., May 5, 1983.

Hon. JOHN C. DANFORTH,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN DANFORTH: The membership of the National Farmers Organization has repeatedly expressed strong opposition to the coal slurry pipeline concept contemplated in several legislative proposals in recent years. I appreciate your invitation to testify today before the Subcommittee but find that it is impossible because of conflicting prior commitments.

Our membership consists of farmers and ranchers who produce the major commodities such as grain, cattle, hogs, sheep and milk in the principal farming communities of the United States. It is traditional in this membership to resist the imposition of unnecessary regulation and interference in our business or our personal lives by the federal agencies. We strongly believe that every effort should be made in the Congress to avoid legislating in areas that are best handled by local authority.

In this instance we are doubly concerned because of the threat of proposed coal slurry pipeline construction to our limited supplies of usable water and the unnecessary precedent that would be established by granting eminent domain authority to private profit-making conglomerates.

The claims of the sponsors of these proposals notwithstanding, granting such an eminent domain privileges does not necessarily guarantee competition in the transportation field. It does nothing to assure any compensatory benefits for those who need water at the local level or for those farmers and ranchers whose property rights would be compromised.

The pipelines would be designed for only one use. Rather than generate compensation and bring down our costs of operation, there is every likelihood that the railroads and barge lines would retaliate by increasing rates on other products and closing some more branch lines.

We urge the Congress to stay out of the pipeline business and avoid responsibility for drying up a number of local communities and farming enterprises. The proposed coal slurry pipeline legislation should not become law.

Please make this statement a part of the record and call on us if we may be of further assistance.

Sincerely,

CHARLES L. FRAZIER,
Director, Washington Office.

NEW YORK UNIVERSITY,
New York, N.Y., June 10, 1983.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DANFORTH: I am writing to express my views on S. 267, the Coal Distribution and Utilization Act of 1983. Specifically, I would like to express my concern over the bill's failure to place any restrictions on the ownership of coal pipeline distribution systems by electric power companies. Such integration, in my opinion, poses unnecessary anticompetitive risks, risks which cannot adequately be dealt with by the antitrust review set out in Section 4(e).

There is a long history in the antitrust laws of competitive problems arising out of conduct of vertically integrated firms which are monopolists at one stage of the production process. From the early case of *United States* v. *Terminal R.R. Ass'n*, 224 U.S. 383 (1912), to the recent private and government litigation against AT&T, antitrust enforcement authorities have been concerned about such firms strategically using their monopoly power at one stage of the production process to adversely affect competition at another. These cases most often involve refusals to deal by the monopolist with potentially competing firms, or predatory "squeeze pricing" in which the monopolist sells its product at a uniform high price "to itself" and to its competitors. I believe that the potential for this sort of anticompetitive behavior by electric power companies is clearly present if they are allowed to own coal pipeline distribution systems. Such ownership would give them the incentive to suppress potential competition at the power generation level by refusing to deal with other companies who may wish to buy coal, or by building a pipeline with capacity to serve only its own needs, or by selling the coal at a high price. In addition, many

electric power companies have vertically integrated into coal production. Although the bill does provide some access for "small and independent" coal producers, power company ownership of the pipeline will still provide a tremendous incentive for favoring captive coal, thereby further weakening competitive forces in the coal industry.

Consideration of the issue of vertical integration in this industry cannot ignore the regulated status of electric power companies. It has been frequently observed that a rate-regulated firm will likely seek to avoid effective rate regulation by purchasing from an unregulated subsidiary at high transfer prices. Indeed, this was a common regulatory problem for the many years when AT&T's regulated operating companies purchased equipment from the unregulated Western Electric Company. Further, even without attempting to "take out" monopoly profits through purchases from unregulated subsidiaries, rate regulation necessarily diminishes market incentives for efficient operation. This, again, has been an historic concern of state regulators; investment in, and ownership of, coal pipeline systems can only increase the costs of regulation as state regulatory agencies attempt to insure efficient operations. Finally, a firm operating in both regulated and unregulated markets has a tremendous incentive to subsidize the competitive markets through manipulation of cost allocations, if necessary to deal with competition. Again, this was an important part of the antitrust charge against AT&T. The coal pipelines, of course, will face some intermodal competition from the railroads.

Unfortunately, an antitrust review prior to constructing a pipeline is not adequate to deal with these problems. In none of these cases did the court hold the mere fact of vertical integration illegal. Rather, the courts found that the Sherman Act had been violated by specific acts done by the monopolist. Whatever one might be able to predict could result from electric power company ownership of a coal pipeline, it would be difficult to say that such ownership, in itself, was "not consistent with the antitrust laws," the standard for disapproval under Section 4(e). Thus, the Attorney General will likely find it impossible to block a transaction on the basis of competitive concerns. I note that, in addition, whatever may be the Attorney General's findings with regard to the "likely effects upon competition of approval," or the Attorney General's recommendations deemed "necessary to protect and promote competition," such views will be merely advisory and could easily be overcome by the other considerations spelled out in Section 4(b).

We have long been concerned about the adverse effects of diversification by public utility companies, a concern made concrete in the Public Utility Holding Company Act. We have also seen many examples of competitive abuses by vertically integrated firms with monopoly power at one stage of the production process. In light of both these concerns, the legislative question must be why allow integration? Unless these pipeline ventures are so lacking in investors that we must have electric power company participation to get them built, I would suggest that there is no reason to run predictable competitive risks.

I want to thank you for giving me this opportunity to express my views. I hope this letter has been of some assistance to you.

Sincerely,

HARRY FIRST,
Professor of Law.

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